VOL. 61 – NO. 52 FRIDAY, DECEMBER 19, 2014

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council passes Law 20-141, Residential Real Property Equity and Transparency Amendment Act of 2014
- Office of the State Superintendent of Education passes rules that allow grants to be awarded to Local Education Agencies (LEAs) to improve career and technical education in the District
- District Department of the Environment announces funding availability for the Wetland Conservation Plan and Registry grants
- Department of Health schedules a public hearing on the Preventive Health and Health Services Block Grant
- Department of Health expands Human Papillomavirus (HPV) immunization to cover more children
- Department of Health announces payment adjustments for the Health Professional Recruitment Program
- Executive Office of the Mayor publishes Freedom of Information Act Appeals

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.

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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

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-140

"Fiscal Year 2014 Revised Budget Request Temporary Adjustment Act of 2014"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-752 on first and second readings May 28, 2014, and June 24, 2014, respectively, pursuant to Section 404(e) of the Charter, the bill became Act 20-376 and was published in the August 1, 2014 edition of the D.C. Register (Vol. 61, page 7594). Act 20-376 was transmitted to Congress on July 29, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-376 is now D.C. Law 20-140, effective December 4, 2014.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

July	29, 30, 31
August	1, 4, 5, 6, 7, 8
September	8, 9, 10, 11, 12, 15, 16, 17, 18, 19
October	15
November	12, 13, 14, 17, 18, 19, 20
December	1, 2, 3

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-141

"RESIDENTIAL REAL PROPERTY EQUITY AND TRANSPARENCY AMENDMENT ACT OF 2014"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-23 on first and second readings April 8, 2014, and May 6, 2014, respectively. Following the signature of the Mayor on July 15, 2014, pursuant to Section 404(e) of the Charter, the bill became Act 20-378 and was published in the August 1, 2014 edition of the D.C. Register (Vol. 61, page 7763). Act 20-378 was transmitted to Congress on July 29, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-378 is now D.C. Law 20-141, effective December 4, 2014.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

July	29, 30, 31
August	1, 4, 5, 6, 7, 8
September	8, 9, 10, 11, 12, 15, 16, 17, 18, 19
October	15
November	12, 13, 14, 17, 18, 19, 20
December	1, 2, 3

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-502

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 8, 2014

To require the Mayor to develop a plan that provides a range of comprehensive services that address the assessed needs of homeless individuals at 425 2nd Street, N.W., and that complies with the Statement of Principles developed by the Center for Creative Non-Violence Task Force.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Plan for Comprehensive Services for Homeless Individuals at 425 2nd Street, N.W., Act of 2014".

Sec. 2. Plan for comprehensive services for homeless individuals at 425 2nd Street, N.W., required.

(a) The Mayor shall develop a plan to provide continued homeless services for individuals residing at the property located at 425 2nd Street, N.W.

(b) The plan shall comply with the following Statement of Principles, developed by the task force established pursuant to the CCNV Task Force Emergency Act of 2013, effective August 2, 2013 (D.C. Act 20-147; 60 DCR 11809), and corresponding temporary legislation:

(1) The District of Columbia has an obligation to provide for the needs of homeless District of Columbia residents in the development of its parcel at 425 2nd Street, N.W. This obligation went into effect when the property was first transferred from the federal government to the District of Columbia.

(2) Any new development of the parcel should be "build first," that is, the existing shelter should not be razed until replacement capacity is fully available.

(3) Replacement capacity should be located at the current site to respond effectively to the needs of residents, to the maximum extent possible.

(4) Any replacement capacity located off-site should be close to public transportation, and for ease of access to jobs and services, ideally located in the downtown area of the District of Columbia.

(5) Replacement capacity should:

(A) Primarily be deeply affordable housing;

(B) Include single room occupancy ("SRO"), efficiency, and studio design;

(C) Reflect the Housing First model of permanent supportive housing;

ENROLLED ORIGINAL

(D) Specifically target the needs of youth under 25 years of age; and

(E) Provide 24-hour low barrier shelter and hypothermia shelter; provided, that some scattered site capacity, through vouchers or otherwise, might be appropriate or desirable for some residents.

(6) Any SRO, efficiency, or studio design unit should have sufficient square footage to meet current recommended standards for living space.

(7) Private bathing and cooking space should be prioritized to the maximum extent possible.

(8) Any site re-design should be responsive to security needs of residents, both within the building and in the surrounding environments.

(9) Any new development should follow sustainable and green principles.

(10) In any new construction, developers should follow "First Source" requirements. All efforts should be made to employ as many residents of 425 2nd Street, N.W., as possible.

(11) Priority for new units should be given to current residents, people with disabilities, and people who are elderly.

(12) All efforts should be taken in the redevelopment design to allow families, including families with no minor children, to be housed or sheltered together, regardless of gender.

(13) It is important to have services available on-site.

(14) Assessment of service needs, for example, whether a resident needs permanent supportive housing, should be made using the "state of the art" tools and standards available at the time of assessment.

(15) There should be office space for management of programs included in the site re-design.

(16) All non-shelter services presently at 425 2nd Street, N.W., should be included in the site re-design to the maximum extent feasible.

(17) All providers and relevant programs should meet the highest standards and have appropriate qualifications for the service provided.

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

ENROLLED ORIGINAL

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
December 8, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-503

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 8, 2014

To amend the Department of Transportation Establishment Act of 2002 to authorize the Director of the District Department of Transportation ("DDOT") to establish and enforce infractions relating to the unauthorized use of public space in the District through the issuance of fines, compliance orders, and abatement; to amend the Office of Administrative Hearings Establishment Act of 2001 to add infractions imposed under DDOT's jurisdiction to the cases adjudicated by the Office of Administrative Hearings; to amend An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District to enforce and adjudicate infractions under this act pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985; and for other purposes.

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

Sec. 2. The Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.01 *et seq.*), is amended as follows:

(a) A new section 2a is added to read as follows:

"Sec. 2a. Definitions.

"For the purposes of this title, the term:

"(1) "Person" means an individual, corporation, firm, agency, company, association, organization, partnership, society, or joint stock company.

"(2) "Property line" means the line of demarcation separating privately owned property fronting or abutting a street or alley from publicly owned property on the other side of the line of demarcation.

"(3) "Public right-of-way" means the surface, air space above the surface, and area below the surface of any public street, highway, bridge, tunnel, alley, or sidewalk.

"(4) "Public space" means all the publicly owned property between property lines shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines.

"(5) "Respondent" means a person subject to a civil fine, compliance order, or abatement procedure as defined in section 9k.".

(b) Section 5 (D.C. Official Code § 50-921.04) is amended as follows:

(1) Paragraph (3) is amended as follows:

(A) Subparagraph (D)(iii) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(B) A new subparagraph (D-i) is added to read as follows:

"(D-i) Install and maintain parking meters and other parking control devices and systems on public rights-of-way and other public spaces in the District; and".

(2) Paragraph (4) is amended as follows:

(A) Subparagraph (A) is amended to read as follows:

"(A) Review, approve, and issue public space permit requests for occupancy, work within, or other use of the public space, including private use and utility work public space requests, and ensure that transportation services are maintained and that the infrastructure is restored after the occupancy, work within, or other use is complete;"

(B) Subparagraph (F) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(C) Subparagraph (G)(iv) is amended by striking the period and inserting the phrase "; and" in its place.

(D) A new subparagraph (H) is added to read as follows:

"(H) Develop, implement, and enforce a comprehensive plan that covers the care, maintenance, and upkeep of public space and federal reservations under the control of DDOT.".

(c) New sections 9j and 9k are added to read as follows:

"Sec. 9j. Rules.

"(a) The Director, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this title.

"(b) The rules may establish fees as may be necessary or useful for implementation of the title, including permit application fees, fees for the use of public space, and fees for services provided by DDOT or rights or privileges granted by DDOT.

"Sec. 9k. Enforcement.

"(a) The Director may inspect private property located on public space and private work performed within public space and may perform such other inspections necessary to protect the public space or public safety or ensure compliance with this title, the regulations promulgated pursuant to this title, or permits, notices, or orders issued pursuant to this title.

"(b) Civil fines and penalties may be imposed as sanctions for any violation of the provisions of this title or any rules promulgated under the authority of this title, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"). Fines and penalties may be imposed for each day that a violation continues. Enforcement and adjudication of a violation shall be pursuant to the Civil Infractions Act.

"(c)(1) For violations of this title or any rules promulgated under the authority of this title, the Director may issue a notice of infraction, pursuant to the Civil Infractions Act. The

notice of infraction may impose a fine or penalty, may require the respondent to take action to correct a violation of a law or regulation or cease conduct that violates a law or regulation, or may both impose a fine or penalty and require the respondent to take action to correct a violation of a law or regulation or cease conduct that violates a law or regulation.

"(2) If the notice of infraction requires the respondent to take action to correct a violation of a law or regulation or cease conduct that violates a law or regulation, the notice of infraction shall include the following information, in addition to the information required by section 201(b) of the Civil Infractions Act:

"(A) A description of the violation;

"(B) A statement that the respondent's conduct violating the applicable law or regulation must cease, or a statement the respondent must take action to correct the violation;

"(C) The date and time by which the respondent must cease the violating conduct or take the corrective action; and

"(D) A statement that if the respondent fails to comply with the notice or request a hearing within the stated time, the Director may:

"(i) Remove and dispose of property unlawfully occupying public space and repair any damage to the public space caused by the violation;

"(ii)Take action to protect the public from the effects and potential effects of the violation; and

"(iii) Recover 3 times the cost and expense of removing and disposing of property unlawfully occupying public space, repairing any damage to the public space caused by the violation, and taking action to protect the public from the effects and potential effects of the violation.

"(3) If a respondent does not comply with the notice or request a hearing pursuant to section 201 of the Civil Infractions Act by the date and time stated on the notice of infraction, the notice shall be deemed final. If a respondent does not comply with a notice that has been deemed final, the Director may:

"(A) Remove private property unlawfully occupying public space;

"(B) Repair any damage to the public space caused by the respondent's violation;

"(C) Take action to protect the public from the effects and potential effects of the violation;

"(D) Recover the costs of the removal and repairs pursuant to subsection (f) of this section and section 203 of the Civil Infractions Act;

"(E) Through the Office of the Attorney General, petition the Superior Court of the District of Columbia to issue an order compelling compliance; or

"(F) Take any other action authorized by law or regulation.

"(4)(A) Whenever the Director takes action under paragraph (3)(A), (B), or (C) of this subsection, the Director shall serve a notice on the respondent describing the action that was taken. If property was removed from the public space, the notice shall describe the method by

which the respondent may recover the property and the deadline by which the respondent must recover the property. The notice shall also state the amount, if any, to be assessed against the respondent pursuant to section 203 of the Civil Infractions Act.

"(B) A respondent may contest the amount assessed pursuant to subparagraph (A) of this paragraph by requesting a hearing pursuant to section 201 of the Civil Infractions Act.

"(d)(1) Where a violation of this title or a rule promulgated under the authority of this title presents an actual or potential hazard to the public, the Director may summarily remove private property unlawfully occupying public space, repair damage to the public space caused by the violation, and take action to protect the public from the effects and potential effects of the violation. If such action is taken by the Director, the Director shall issue a notice of infraction pursuant to the Civil Infractions Act

"(2) In addition to the information required under section 201(b) of the Civil Infractions Act, the notice of infraction shall include the following information:

"(A) A description of the action taken by the Director;

"(B) The amount the respondent must pay pursuant to subsection (f) of this section; provided, that the Director may recover the costs and expenses authorized by subsection (f) of this section, or any portion of those costs and expenses, through a separate notice of infraction;

"(C) A statement that the respondent has a right to request an expedited hearing by making this request in writing within 5 days after service of the notice;

"(D) The method by which the respondent may recover property removed from the public space, if any; and

"(E) The deadline by which the respondent must recover the property.

"(3) If a respondent has requested an expedited hearing, the Office of Administrative Hearings shall conduct the hearing within 72 hours after receipt of the request.

"(e)(1) The Director shall store private property removed from the public space pursuant to subsection (c) or (d) of this section for at least 15 days after the service of the notice.

"(2) If the respondent does not recover the property by the date set forth in the notice, the Director may, in accordance with reasonable business practices, sell or otherwise dispose of the property.

"(3)(A) A respondent who fails to reclaim the property within the time prescribed shall nevertheless be entitled to recover the fair market value of any property disposed of pursuant to this subsection if:

"(i) The respondent timely requests a hearing;

"(ii) The administrative law judge dismisses the notice or order or finds no violation; and

"(iii) The respondent establishes the property's fair market value by a preponderance of the evidence.

"(B) For the purposes of this subparagraph, if the District has sold the property, the price paid by a good faith purchaser, other than the respondent, shall establish a

rebuttable presumption of the fair market value of the property. In no event, however, shall the respondent be entitled to recover an amount greater than the price paid by the purchaser.

"(f) The Director may recover 3 times the cost and expense of removing and disposing of property unlawfully occupying public space, repairing any damage to the public space caused by the violation, and taking action to protect the public from the effects and potential effects of the violation pursuant to subsections (c) and (d) of this section.".

Sec. 3. Section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended as follows:

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

(1) Paragraph (8) is amended by striking the semicolon and inserting the phrase "; and" in its place.

(2) Paragraph (9) is repealed.

(3) Paragraph (10) is amended by striking the phrase "; and" and inserting a period in its place.

(4) Paragraph (11) is repealed.

(b) A new subsection (b-8) is added to read as follows:

"(b-8) In addition to those cases described in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), and (b-7), this act shall apply to adjudicated cases under the jurisdiction of the District Department of Transportation.".

Sec. 4. An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code § 1-303.21 *et seq.*), is amended as follows:

(a) Section 1(b) (D.C. Official Code § 1-303.21(b)) is amended as follows:

(1) Paragraph (8) is amended by striking the semicolon and inserting the phrase "; and" in its place.

(2) Paragraph (9) is amended by striking the phrase "; and" and inserting a period in its place.

(3) Paragraph (10) is repealed.

(b) Section 4(a) (D.C. Official Code § 1-303.23(a)) is amended to read as follows:

"(a) Enforcement and adjudication of infractions of these rules shall be pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"), the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.01 *et seq.*) ("DDOT Establishment Act"), and Chapter 1A of Title 12A of the Construction Codes. The Mayor shall enforce the rules applicable to signs on public space, public rights-of-way, public buildings and structures, and other property owned or controlled by the District under the Civil Infractions Act and the DDOT Establishment Act. The

rules applicable to signs on private property shall be enforced under the Civil Infractions Act and Chapter 1A of Title 12A of the Construction Codes. The Mayor shall also establish, by rulemaking, a schedule of fines and penalties for infractions of these rules, which shall be subject to Council review and approval as described in section 1.".

Sec. 5. Section 3(a)(1) of the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code § 8-802(a)(1)), is amended by striking the phrase "§§ 101, 102, 103, 104 ,108, 900.7, 900.8, 900.10, 1000, 1001, 1002, 1005, 1008, 1009, 2000, 2001, 2002, and 2010 of 24 DCMR" and inserting the phrase "§§ 108, 900.7, 900.8, 900.9, 900.10, 1000, 1002, 1008, 1009, 2001.3, 2010 of 24 DCMR" in its place.

Sec. 6. The District of Columbia Public Space Rental Act, approved October 17, 1968 (82 Stat. 1156; D.C. Official Code § 10-1101.01 *et seq.*), is amended as follows:

(a) Section 201 (D.C. Official Code § 10-1102.01) is amended as follows:

(1) Strike the phrase "subject to the provisions of sections 1 and 2 of An Act To regulate, the height, exterior design, and construction of private and semipublic buildings in certain areas of the National Capital, approved May 16, 1930 (46 Stat. 366; D.C. Official Code §§ 6-611.01 and 6-611.02)," and insert the phrase "subject to the provisions of sections 1 and 2 of An Act To regulate, the height, exterior design, and construction of private and semipublic buildings in certain areas of the National Capital, approved May 16, 1930 (46 Stat. 366; D.C. Official Code §§ 6-611.01 and 6-611.02), if the proposed rental of public space entails the erection or alteration of the exterior of a building," in its place.

(2) Strike the word "him" and insert the phrase "the Mayor" in its place.

(3) Strike the phrase "owner of the real property abutting such space" and insert the phrase "person using such space" in its place.

(b) Section 404 (D.C. Official Code § 10-1104.04) is amended to read as follows:

"Sec. 404. Enforcement; penalties.

"(a) A violation of this act or a rule issued in accordance with this act shall be enforced and adjudicated pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"). The Mayor may also enforce a violation of this act or a rule issued in accordance with this act pursuant to section 9k(a), (c), (d), (e), and (f) of the Department of Transportation Establishment Act of 2002, passed on 2nd reading on November 18, 2014 (Enrolled version of Bill 20-905).

"(b) A person who violates a provision of this act may be punished by a fine not exceeding $100 or imprisonment for not more than 10 days.".

(c) Sections 405, 406, 407, and 409 (D.C. Official Code §§ 10-1104.05, 10-1104.06, 10-1104.07. and 10-1104.09) are repealed.

Sec. 7. Section 11 of the District of Columbia Public Space Utilization Act, approved October 17, 1968 (82 Stat. 1166; D.C. Official Code § 10-1121.10), is amended to read as follows:

"Sec. 11. Rules; enforcement.

"(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act.

"(b) A violation of this act or a rule issued in accordance with this act may be punished by imprisonment of not more than 90 days.

"(c) The Mayor may maintain an action in the Superior Court of the District of Columbia to enjoin any continuing violation of this act or a rule issued in accordance with this act.

"(d) Civil fines and penalties may be imposed as alternative sanctions for any infraction of the provisions of this act or any rules promulgated under the authority of this act, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"). Enforcement and adjudication of an infraction shall be pursuant to the Civil Infractions Act.

"(e) The Mayor may also enforce this act or a rule issued in accordance with this act pursuant to section 9k(a), (c), (d), (e), and (f) of the Department of Transportation Establishment Act of 2002, passed on 2nd reading on November 18, 2014 (Enrolled version of Bill 20-905).".

Sec. 8. 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.*), is amended by adding a new section 607 to read as follows:

"Sec. 607. Enforcement.

"(a) Civil fines and penalties may be imposed as sanctions for any infraction of the provisions of this title or any rules issued in accordance with this title, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"). Enforcement and adjudication of an infraction shall be pursuant to the Civil Infractions Act.

"(b) The Mayor may also enforce this title or any rules issued in accordance with this title pursuant to section 9k(a), (c), (d), (e), and (f) of the Department of Transportation Establishment Act of 2002, passed on 2nd reading on November 18, 2014 (Enrolled version of Bill 20-905).".

Sec. 9. The Abatement of Dangerous Conditions on Public Space Act of 2004, effective December 7, 2004 (D.C. Law 15-205; D.C. Official Code § 10-1181.01 *et seq.*), is amended by adding new sections 6026a and 6026b to read as follows:

"Sec. 6026a. Rules.

"The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this subtitle.

"Sec. 6026b. Enforcement.

"(a) Violations of this subtitle or a rule issued in accordance with this subtitle may be punished by imprisonment of not more than 90 days.

"(b) The Mayor may maintain an action in the Superior Court of the District of Columbia to enjoin any continuing violation of this subtitle or a regulation issued pursuant to this subtitle.

"(c) Civil fines and penalties may be imposed as alternative sanctions for any infraction of the provisions of this subtitle or any rules issued in accordance with this subtitle, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"). Enforcement and adjudication of an infraction shall be pursuant to the Civil Infractions Act.

"(d) The Mayor may also enforce this subtitle or any rules issued in accordance with this subtitle pursuant to section 9k(a), (c), (d), (e), and (f) of the Department of Transportation Establishment Act of 2002, passed on 2nd reading on November 18, 2014 (Enrolled version of Bill 20-905)("DDOT Establishment Act"); provided, that references to the Director in section 9k(a), (c), (d), (e), and (f) of the DDOT Establishment Act shall be deemed to be references to the Mayor for the purposes of this subsection.".

Sec. 10. Section 205 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1802.05), is amended as follows:

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

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

"(b) Where property unlawfully occupies public space, including a public right-of-way, in violation of An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code § 1-303.21 *et seq.*), the District of Columbia Public Space Rental Act, approved October 17, 1968 (82 Stat. 1156; D.C. Official Code § 10-1101.01 *et seq.*), the District of Columbia Public Space Utilization Act, approved October 17, 1968 (82 Stat. 1166; D.C. Official Code § 10-1121.01 *et seq.*), the Public Space Permitting Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.01 *et seq.*), the Abatement of Dangerous Conditions on Public Space Act of 2004, effective December 7, 2004 (D.C. Law 15-205; D.C. Official Code § 1181.01 *et seq.*), or the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.01 *et seq.*), or another law regulating the occupancy or use of public space, including the public right-of-way, and the identity or location of the property owner is unknown, service may also be made by:

"(1) Conspicuously posting the notice or order on the property alleged to be in violation; and

"(2) Posting the information regarding the notice or order on the website of the agency issuing the notice or order.".

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Sec. 11. An Act to authorize the Commissioners of the District of Columbia to provide for the parking of automobiles in the Municipal Center, approved June 6, 1940 (54 Stat. 241; D.C. Official Code § 50-2632), is repealed.

Sec. 12. Applicability.

(a) Section 2(a), 2(b)(1), 2(b)(2)(A), 2(b)(2)(B), 2(b)(2)(C), 2(c), 3, 4, 6, 7, 8, 9, 10, and 11 shall apply as of the effective date of this act.

(b) Section 2(b)(2)(D) shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

(c) Section 5 shall apply upon the effective date of rules promulgated pursuant to section 9j of the Department of Transportation Establishment Act of 2002, passed on 2nd reading on November 19, 2014 (Enrolled version of Bill 20-905).

Sec. 13. 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. 14. 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
December 8, 2014

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AN ACT

D.C. ACT 20-504

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 8, 2014

To authorize the issuance of District of Columbia general obligation tax revenue anticipation notes to finance general governmental expenses for the fiscal year ending September 30, 2015.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fiscal Year 2015 Tax Revenue Anticipation Notes Act of 2014".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Additional Notes" means District general obligation revenue anticipation notes described in section 9 that may be issued pursuant to section 472 of the Home Rule Act and that will mature on or before September 30, 2015, on a parity with the notes.

(2) "Authorized delegate" means the City Administrator, the Chief Financial Officer, or the Treasurer 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.

(3) "Available funds" means District funds required to be deposited with the Escrow Agent, receipts, and other District funds that are not otherwise legally committed.

(4) "Bond Counsel" means a firm or firms of attorneys designated as bond counsel or co-bond counsel from time to time by the Chief Financial Officer.

(5) "Chief Financial Officer" means the Chief Financial Officer of the District of Columbia, established pursuant to section 424(a)(1) of the Home Rule Act.

(6) "City Administrator" means the City Administrator established pursuant to section 422(7) of the Home Rule Act.

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

(8) "District" means the District of Columbia.

(9) "Escrow Agent" means any bank, trust company, or national banking association with requisite trust powers designated to serve in this capacity by the Chief Financial Officer.

(10) "Escrow Agreement" means the escrow agreement between the District and the Escrow Agent authorized in section 7.

(11) "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.*)

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(12) "Mayor" means the Mayor of the District of Columbia.

(13) "Notes" means one or more series of District general obligation revenue anticipation notes authorized to be issued pursuant to this act.

(14) "Receipts" means all funds received by the District from any source, including, but not limited to, taxes, fees, charges, miscellaneous receipts, and any moneys advanced, loaned, or otherwise provided to the District by the United States Treasury, less funds that are pledged to debt or other obligations according to section 9 or that are restricted by law to uses other than payment of principal of, and interest on, the notes.

(15) "Secretary" means the Secretary of the District of Columbia.

(16) "Treasurer" means the District of Columbia Treasurer established pursuant to section 424(a)(3)(E) of the Home Rule Act.

Sec. 3. Findings.

The Council finds that:

(1) Under section 472 of the Home Rule Act, the Council may authorize, by act, the issuance of general obligation revenue anticipation notes for a fiscal year in anticipation of the collection or receipt of revenues for that fiscal year. Section 472 of the Home Rule Act provides further that the total amount of general obligation revenue anticipation notes issued and outstanding at any time during a fiscal year shall not exceed 20% of the total anticipated revenue of the District for that fiscal year, as certified by the Mayor pursuant to section 472 of the Home Rule Act, as of a date not more than 15 days before each original issuance of the notes.

(2) Under section 482 of the Home Rule Act, the full faith and credit of the District is pledged for the payment of the principal of, and interest on, any general obligation revenue anticipation note.

(3) Under section 483 of the Home Rule Act, the Council is required to provide in the annual budget sufficient funds to pay the principal of, and interest on, all general obligation revenue anticipation notes becoming due and payable during that fiscal year, and the Mayor is required to ensure that the principal of, and interest on, all general obligation revenue anticipation notes is paid when due, including by paying the principal and interest from funds not otherwise legally committed.

(4) The Chief Financial Officer has advised the Council that, based upon the Chief Financial Officer's projections of anticipated receipts and disbursements during the fiscal year ending September 30, 2015, it may be necessary for the District to borrow a sum not to exceed $600 million, an amount that does not exceed 20% of the total anticipated revenue of the District for such fiscal year, and to accomplish the borrowing by issuing general obligation revenue anticipation notes in one or more series.

(5) The issuance of general obligation revenue anticipation notes in a sum not to exceed $600 million is in the public interest.

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Sec. 4. Note authorization.

(a) The District is authorized to incur indebtedness by issuing the notes pursuant to sections 472 and 482 of the Home Rule Act, in one or more series, in a sum not to exceed $600 million, to finance its general governmental expenses, in anticipation of the collection or receipt of revenues for the fiscal year ending September 30, 2015.

(b) The Chief Financial Officer is authorized to pay from the proceeds of the notes the costs and expenses of issuing and delivering the notes, including, but not limited to, underwriting, legal, accounting, financial advisory, note insurance or other credit enhancement, marketing and selling the notes, and printing costs and expenses.

Sec. 5. Note details.

(a) The notes shall be known as "District of Columbia Fiscal Year 2015 General Obligation Tax Revenue Anticipation Notes" and shall be due and payable, as to both principal and interest, on or before September 30, 2015.

(b) The Chief Financial Officer is authorized to take any action necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the notes, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the notes, including any redemptions applicable thereto and a determination that the notes may be issued in book-entry form;

(2) Provisions for the transfer and exchange of the notes;

(3) The principal amount of the notes to be issued;

(4) The rate or rates of interest or the method of determining the rate or rates of interest on the notes; provided, that the interest rate or rates borne by the notes of any series shall not exceed in the aggregate 10% per year calculated on the basis of a 365-day year (actual days elapsed); provided further, that if the notes are not paid at maturity, the notes may provide for an interest rate or rates after maturity not to exceed in the aggregate 15% per year calculated on the basis of a 365-day year (actual days elapsed);

(5) The date or dates of issuance, sale, and delivery of the notes;

(6) The place or places of payment of principal of, and interest on, the notes;

(7) The designation of a registrar, if appropriate, for any series of the notes, and the execution and delivery of any necessary agreements relating to the designation;

(8) The designation of paying agent(s) or escrow agent(s) for any series of the notes, and the execution and delivery of any necessary agreements relating to such designations; and

(9) Provisions concerning the replacement of mutilated, lost, stolen, or destroyed notes.

(c) The notes shall be executed in the name of the District and on its behalf by the manual signature of the Mayor or an authorized delegate. The official seal of the District or a facsimile of it shall be impressed, printed, or otherwise reproduced on the notes. If a registrar is

designated, the registrar shall authenticate each note by manual signature and maintain the books of registration for the payment of the principal of and interest on the notes and perform other ministerial responsibilities as specifically provided in its designation as registrar.

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

Sec. 6. Sale of the notes.

(a) The notes of any series shall be sold at negotiated sale pursuant to a purchase contract or at competitive sale pursuant to a bid form. The notes shall be sold at a price not less than par plus accrued interest from the date of the notes to the date of delivery thereof. The purchase contract or bid form shall contain the terms that the Chief Financial Officer considers necessary or appropriate to carry out the purposes of this act. The Chief Financial Officer's execution and delivery of the purchase contract or bid form shall constitute conclusive evidence of the Chief Financial Officer's approval, on behalf of the District, of the final form and content of the notes. The Chief Financial Officer shall deliver the notes, on behalf of the District, to the purchasers upon receiving the purchase price provided in the purchase contract or bid form.

(b) The Chief Financial Officer may execute, in connection with each sale of the notes, an offering document on behalf of the District, and may authorize the document's distribution in relation to the notes being sold.

(c) The Chief Financial Officer shall take actions and execute and deliver agreements, documents, and instruments (including any amendment of or supplement to any such agreement, document, or instrument) in connection with any series of notes as required by or incidental to:

(1) The issuance of the notes;

(2) The establishment or preservation of the exclusion from gross income for federal income tax purposes of interest on the notes, the treatment of interest on the notes as not constituting an item of tax preference for purposes of the federal alternative minimum tax ("non-AMT"), if the notes are originally issued as non-AMT notes, and the exemption from District income taxation of interest on the notes (except estate, inheritance, and gift taxes);

(3) The performance of any covenant contained in this act, in any purchase contract for the notes, or in any escrow or other agreement for the security thereof;

(4) The provision for securing the repayment of the notes by a letter or line of credit or other form of credit enhancement, and the repayment of advances under any such credit enhancement, including the evidencing of such a repayment obligation with a negotiable instrument with such terms as the Chief Financial Officer shall determine; or

(5) The execution, delivery, and performance of the Escrow Agreement, a purchase contract, or a bid form for the notes, a paying agent agreement, or an agreement relating to credit enhancement, if any, including any amendments of any of these agreements, documents, or instruments.

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(d) The notes shall not be issued until the Chief Financial Officer receives an approving opinion of Bond Counsel as to the validity of the notes and the establishment or preservation of the exclusion from gross income for federal income tax purposes of the interest on the notes and, if the notes are issued as non-AMT notes, the treatment of such interest as not an item of tax preference for purposes of the federal alternative minimum tax, and the exemption from the District income taxation of the interest on the notes (except estate, inheritance and gift taxes).

(e) The Chief Financial Officer shall execute a note issuance certificate evidencing the determinations and other actions taken by the Chief Financial Officer for each issue or series of the notes issued and shall designate in the note issuance certificate the date of the notes, the series designation, the aggregate principal amount to be issued, the authorized denominations of the notes, the sale price, and the interest rate or rates on the notes. The Mayor shall certify in a separate certificate, not more than 15 days before each original issuance of a series, the total anticipated revenue of the District for the fiscal year ending September 30, 2015, and that the total amount of all general obligation revenue anticipation notes issued and outstanding at any time during the fiscal year will not exceed 20% of the total anticipated revenue of the District for the fiscal year. These certificates shall be delivered at the time of delivery of the notes and shall be conclusive evidence of the actions taken as stated in the certificates. A copy of each of the certificates shall be filed with the Secretary to the Council not more than 3 days after the delivery of the notes covered by the certificates.

Sec. 7. Payment and security.

(a) The full faith and credit of the District is pledged for the payment of the principal of, and interest on, the notes when due.

(b) The funds for the payment of the notes as described in this act shall be irrevocably deposited with the Escrow Agent pursuant to the Escrow Agreement. The funds shall be used for the payment of the principal of, and interest on, the notes when due, and shall not be used for other purposes so long as the notes are outstanding and unpaid.

(c) The notes shall be payable from available funds of the District, including, but not limited to, any moneys advanced, loaned, or otherwise provided to the District by the United States Treasury, and shall evidence continuing obligations of the District until paid in accordance with their terms.

(d) The Chief Financial Officer may, without regard to any act or resolution of the Council now existing or adopted after the effective date of this act, designate an Escrow Agent under the Escrow Agreement. The Chief Financial Officer may execute and deliver the Escrow Agreement, on behalf of the District and in the Chief Financial Officer's official capacity, containing the terms that the Chief Financial Officer considers necessary or appropriate to carry out the purposes of this act. A special account entitled "Special Escrow for Payment of District of Columbia Fiscal Year 2015 General Obligation Tax Revenue Anticipation Notes" is created and shall be maintained by the Escrow Agent for the benefit of the owners of the notes as stated in the Escrow Agreement. Funds on deposit, including investment income, under the

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Escrow Agreement shall not be used for any purposes except for payment of the notes or, to the extent permitted by the Home Rule Act, to service any contract or other arrangement permitted under subsections (k) or (l) of this section, and may be invested only as provided in the Escrow Agreement.

(e) Upon the sale and delivery of the notes, the Chief Financial Officer shall deposit with the Escrow Agent to be held and maintained as provided in the Escrow Agreement all accrued interest and premium, if any, received upon the sale of the notes.

(f)(1) The Chief Financial Officer shall set aside and deposit with the Escrow Agent funds in accordance with the Escrow Agreement at the time and in the amount as provided in the Escrow Agreement.

(2) If Additional Notes are issued pursuant to section 9(b), and if on the date set forth in the Escrow Agreement, the aggregate amount of principal and interest payable at maturity on the outstanding notes, including any Additional Notes, less all amounts on deposit, including investment income, under the Escrow Agreement exceeds 90% of the actual receipts of District taxes (other than special taxes or charges levied pursuant to section 481(a) of the Home Rule Act, and taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act), for the period August 15, 2015, until September 30, 2015, beginning on the date set forth in the Escrow Agreement, the Chief Financial Officer shall promptly, upon receipt by the District, set aside and deposit with the Escrow Agent the receipts received by the District after the date set forth in the Escrow Agreement, until the aggregate amount of principal and interest payable at maturity on the outstanding notes, including any Additional Notes as described above, is less than 90% of actual receipts of District taxes (other than special taxes or charges levied pursuant to section 481(a) of the Home Rule Act, and taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act).

(3) The District covenants that it shall levy, maintain, or enact taxes due and payable during August 1, 2015, through September 30, 2015, to provide for payment in full of the principal of, and interest on, the notes when due. The taxes referred to in this paragraph shall be separate from special taxes or charges levied pursuant to section 481(a) of the Home Rule Act, or taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act.

(4) The District covenants that so long as any of the notes are outstanding, it shall not grant, create, or permit the existence of any lien, pledge, or security interest with respect to its taxes due and payable during the period August 1, 2015, through September 30, 2015, or commit or agree to set aside and apply those tax receipts to the payment of any obligation of the District other than the notes. The taxes referred to in this paragraph shall not include special taxes or charges levied pursuant to section 481(a) of the Home Rule Act, or taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act, or any real property tax liens created or arising in any fiscal year preceding the issuance of the notes.

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(g) Before the 16th day of each month, beginning in August 2015, the Chief Financial Officer shall review the current monthly cash flow projections of the District, and if the Chief Financial Officer determines that the aggregate amount of principal and interest payable at maturity on the notes then outstanding, less any amounts and investment income on deposit under the Escrow Agreement, equals or exceeds 85% of the receipts estimated by the Chief Financial Officer to be received after such date by the District but before the maturity of the notes, then the Chief Financial Officer shall promptly, upon receipt by the District, set aside and deposit with the Escrow Agent the receipts received by the District on and after that date until the aggregate amount, including investment income, on deposit with the Escrow Agent equals or exceeds 100% of the aggregate amount of principal of and interest on the notes payable at their maturity.

(h) The Chief Financial Officer shall, in the full exercise of the authority granted the Chief Financial Officer under the Home Rule Act and under any other law, take actions as may be necessary or appropriate to ensure that the principal of and interest on the notes are paid when due, including, but not limited to, seeking an advance or loan of moneys from the United States Treasury if available under then current law. This action shall include, without limitation, the deposit of available funds with the Escrow Agent as may be required under section 483 of the Home Rule Act, this act, and the Escrow Agreement. Without limiting any obligations under this act or the Escrow Agreement, the Chief Financial Officer reserves the right to deposit available funds with the Escrow Agent at his or her discretion.

(i) There are provided and approved for expenditure sums as may be necessary for making payments of the principal of, and interest on, the notes, and the provisions of the District of Columbia Appropriations Act, 2015, if enacted prior to the effective date of this act, relating to short-term borrowings are amended and supplemented accordingly by this section, as contemplated in section 483 of the Home Rule Act.

(j) The notes shall be payable, as to both principal and interest, in lawful money of the United States of America in immediately available or same day funds at a bank or trust company acting as paying agent, located in the District, and at not more than 2 co-paying agents that may be located outside the District, one of which shall be located in New York, New York. All of the paying agents shall be qualified to act as paying agents under the laws of the United States of America, of the District, or of the state in which they are located, and shall be designated by the Chief Financial Officer without regard to any other act or resolution of the Council now existing or adopted after the effective date of this act.

(k) In addition to the security available for the holders of the notes, the Chief Financial Officer is hereby authorized to enter into agreements, including any agreement calling for payments in excess of $1 million during Fiscal Year 2015, with a bank or other financial institution to provide a letter of credit, line of credit, or other form of credit enhancement to secure repayment of the notes when due. The obligation of the District to reimburse the bank or financial institution for any advances made under any such credit enhancement shall be a

general obligation of the District until repaid and shall accrue interest at the rate of interest established by the Chief Financial Officer not in excess of 15% per year until paid.

(l) 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 the Financial Institutions Deposit and Investment Amendment Act of 1997, effective March 18, 1998 (D.C. Law 12-56; D.C. Official Code § 47-351.01 *et seq.*), shall not apply to any contract which the Chief Financial Officer may from time to time determine to be necessary or appropriate to place, in whole or in part, including:

(1) An investment or obligation of the District as represented by the notes;

(2) An investment or obligation or program of investment; or

(3) A contract or contracts based on the interest rate, currency, cash flow, or other basis as the Chief Financial Officer may desire, including, without limitation, interest rate swap agreements; currency swap agreements; insurance agreements; forward payment conversion agreements; futures; contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or stock or other indices; contracts to exchange cash flows or a series of payments; and contracts to hedge payment, currency, rate, spread, or similar exposure, including, without limitation, interest rate floors, or caps, options, puts, and calls. The contracts or other arrangements also may be entered into by the District in connection with, or incidental to, entering into or maintaining any agreement that secures the notes. The contracts or other arrangements shall contain whatever payment, security, terms, and conditions as the Chief Financial Officer may consider appropriate and shall be entered into with whatever party or parties the Chief Financial Officer may select, after giving due consideration, where applicable, to the creditworthiness of the counterparty or counterparties including any rating by a nationally recognized rating agency or any other criteria as may be appropriate. In connection with, or incidental to, the issuance or holding of the notes, or entering into any contract or other arrangement referred to in this section, the District may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and any other terms and conditions as the Chief Financial Officer determines. Proceeds of the notes and any money set aside for payment of the notes or of any contract or other arrangement entered into pursuant to this section may be used to service any contract or other arrangement entered into pursuant to this section.

Sec. 8. Defeasance.

(a) The notes shall no longer be considered outstanding and unpaid for the purpose of this act and the Escrow Agreement, and the requirements of this act and the Escrow Agreement shall be deemed discharged with respect to the notes, if the Chief Financial Officer:

(1) Deposits with an Escrow Agent, herein referred to as the defeasance escrow agent, in a separate defeasance escrow account, established and maintained by the Escrow Agent solely at the expense of the District and held in trust for the note owners, sufficient moneys or

direct obligations of the United States, the principal of and interest on which, when due and payable, will provide sufficient moneys to pay when due the principal of, and interest payable at maturity on, all the notes; and

(2) Delivers to the defeasance escrow agent an irrevocable letter of instruction to apply the moneys or proceeds of the investments to the payment of the notes at their maturity.

(b) The defeasance escrow agent shall not invest the defeasance escrow account in any investment callable at the option of its issuer if the call could result in less than sufficient moneys being available for the purposes required by this section.

(c) The moneys and direct obligations referred to in subsection (a)(1) of this section may include moneys or direct obligations of the United States of America held under the Escrow Agreement and transferred, at the written direction of the Chief Financial Officer, to the defeasance escrow account.

(d) The defeasance escrow account specified in subsection (a) of this section may be established and maintained without regard to any limitations placed on these accounts by any act or resolution of the Council now existing or adopted after this act becomes effective, except for this act.

Sec. 9. Additional debt and other obligations.

(a) The District reserves the right at any time to: borrow money or enter into other obligations to the full extent permitted by law; secure the borrowings or obligations by the pledge of its full faith and credit; secure the borrowings or obligations by any other security and pledges of funds as may be authorized by law; and issue bonds, notes, including Additional Notes, or other instruments to evidence the borrowings or obligations. The reserved right with regard to notes and Additional Notes issued pursuant to sections 471, 472, 475, and 490 of the Home Rule Act shall be subject to this act. No borrowings or other obligations, including Additional Notes, shall be entered into that would require an immediate set-aside and deposit under section 7(g) applied as of the date of the issuance.

(b)(1) The District may issue Additional Notes pursuant to section 472 of the Home Rule Act that shall mature on or before September 30, 2015, and the District shall covenant to set aside and deposit under the Escrow Agreement receipts and other available funds for payment of the principal of, and the interest on, the Additional Notes issued pursuant to section 472 of the Home Rule Act on a parity basis with the notes.

(2) The receipts and available funds referred to in subsection (a) of this section shall be separate from the special taxes or charges levied pursuant to section 481(a) of the Home Rule Act, and taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act.

(3) Any covenants relating to any Additional Notes shall have equal standing and be on a parity with the covenants made for payment of the principal of, and the interest on, the notes.

(4) If Additional Notes are issued pursuant to section 472 of the Home Rule Act, the provisions of section 7 shall apply to both the notes and the Additional Notes and increase the amounts required to be set aside and deposited with the Escrow Agent.

(5) As a condition precedent to the issuance of any Additional Notes, the Chief Financial Officer shall deliver a signed certificate certifying that the District is in full compliance with all covenants and obligations under this act and the Escrow Agreement, that no set-aside and deposit of receipts pursuant to section 7(g) applied as of the date of issuance is required, and that no set-aside and deposit will be required under section 7(g) applied immediately after the issuance.

(c) Any general obligation notes issued by the District pursuant to section 471 of the Home Rule Act shall not be scheduled to be due and payable until after the earlier of the following:

(1) The stated maturity date of all outstanding notes and Additional Notes; or

(2) The date an amount sufficient to pay all principal and interest payable at maturity on the notes and the Additional Notes is on deposit with the Escrow Agent.

(d) Revenue notes of the District, which are payable from specified District revenue that is set aside for the payment of the revenue notes and that is included in the amount of receipts estimated by the Chief Financial Officer, pursuant to section 7(g), to be received after the proposed date of issue of the revenue notes and before the maturity of the notes, shall not be issued if a set-aside and deposit of receipts pursuant to section 7(g) applied as of the proposed date of the issuance of revenue notes would be required. In determining, for purposes of this subsection, whether a set-aside and deposit would be required, there shall be excluded from receipts estimated by the Chief Financial Officer to be received after the proposed date of issuance of revenue notes and before the maturity of the notes an amount equal to the estimated revenues set aside for the payment of revenue notes.

Sec. 10. Tax matters.

The Chief Financial Officer shall not take any action or omit to take any action, or invest, reinvest, or accumulate any moneys in a manner, that will cause the interest on the notes to be includable in gross income for federal income tax purposes or, if the notes were issued as non-AMT notes, to be treated as an item of tax preference for purposes of the federal alternative minimum tax. The Chief Financial Officer also shall take all actions necessary to be taken so that the interest on the notes will not be includable in gross income for federal income tax purposes or, if the notes were issued as non-AMT notes, be treated as an item of tax preference for purposes of the federal alternative minimum tax.

Sec. 11. Contract.

This act shall constitute a contract between the District and the owners of the notes authorized by this act. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

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Sec. 12. District officials.

(a) The elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the notes or be subject to any personal liability by reason of the issuance of the notes.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the notes shall be valid and sufficient for all purposes, notwithstanding the fact that the official ceases to be that official before delivery of the notes.

Sec. 13. Authorized delegation of authority.

To the extent permitted by the District and federal laws, the Mayor may delegate to the City Administrator, the Chief Financial Officer, or the Treasurer the performance of any act authorized to be performed by the Mayor under this act.

Sec. 14. Maintenance of documents.

Copies of the notes and related documents shall be filed in the Office of the Secretary of the District of Columbia.

Sec. 15. Information reporting.

(a) Within 3 days after the Chief Financial Officer's receipt of the transcript of proceedings relating to the issuance of the notes, the Chief Financial Officer shall transmit a copy of the transcript to the Secretary to the Council.

(b) The Chief Financial Officer shall notify the Council within 30 days of any action taken under section 7(g).

Sec. 16. 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. 17. Effective date.

This act shall take effect upon enactment as provided in section 472(d)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 806; D.C. Official Code § 1-204.72(d)(1)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 8, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-505

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 8, 2014

To amend, on a temporary basis, the District of Columbia Procurement Practices Act of 1985 to align minimum qualifications for the position of Inspector General with federal standards.

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

Sec. 2. Section 208(a)(1) of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 1-301.115a(a)(1)), is amended as follows:

(a) Subparagraph (D) is amended to read as follows:

"(D) The Inspector General shall be appointed:

"(i) Without regard to party affiliation;

"(ii) On the basis of integrity;

"(iii) With demonstrated supervisory and management experience; and

"(iv) With demonstrated experience and ability, in the aggregate, in law, accounting, auditing, financial management analysis, public administration, or investigations.".

(b) Subparagraph (D-i) is repealed.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

(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
December 8, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-506

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 8, 2014

To amend, on a temporary basis, the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to require each administrative law judge, hearing officer, or attorney who is required to be a member of the District of Columbia Bar as a prerequisite of District government employment to file a Certificate of Good Standing from the District of Columbia Court of Appeals on an annual basis.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District Government Certificate of Good Standing Filing Requirement Temporary Amendment Act of 2014".

Sec. 2. Section 881(a) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective July 25, 2002 (D.C. Law 14-182; D.C. Official Code § 1-608.81(a)), is amended by striking the phrase "each attorney" and inserting the phrase "each administrative law judge, hearing officer, or attorney" 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
December 8, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-507

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 8, 2014

To approve, on an emergency basis, Modification Nos. 3, 4, 5, 6, 7, 8, 9, 10, and 11 to Contract No. DCKA-2010-C-0120 with Insight LLC to provide underground utility-marking services, and to authorize payment for the goods and services received and to be received under the contract modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modification Nos. 3, 4, 5, 6, 7, 8, 9, 10, and 11 to Contract No. DCKA-2010-C-0120 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. 3, 4, 5, 6, 7, 8, 9, 10, and 11 to Contract No. DCKA-2010-C-0120 with Insight LLC to provide underground utility-marking services, and authorizes payment in the total amount of $3,644,525.00 for goods and services received and to be received under the contract 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 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
December 8, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-508

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 8, 2014

To amend, on an emergency basis, the Grandparent Caregivers Pilot Program Establishment Act of 2005 to allow the Grandparent Caregivers Program subsidy to be transferred to a relative caregiver when a grandparent is no longer able to care for the child.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Grandparent Caregivers Program Subsidy Transfer Emergency Amendment Act of 2014".

Sec. 2. The Grandparent Caregivers Pilot Program Establishment Act of 2005, effective March 8, 2006 (D.C. Law 16-69; D.C. Official Code § 4-251.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 4-251.01) is amended as follows:

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

"(1A) "Godparent" means an individual identified by a relative of the child by blood, marriage, domestic partnership, or adoption, in a sworn affidavit, to have close personal or emotional ties with the child or the child's family, which pre-dated the child's placement with the individual.".

(2) A new paragraph (3A) is added to read as follows:

"(3A) "Relative" means an individual who is related to the child by blood, marriage, domestic partnership, or adoption or is a godparent of the child.".

(b) A new section 103a is added to read as follows:

"Sec. 103a. Transfer of subsidy.

"(a) The Mayor may transfer subsidy payments to a relative caregiver upon the death or mental or physical incapacity of a grandparent if:

"(1) The relative caregiver files an application for a subsidy within 30 days of becoming the child's primary caregiver;

"(2) The relative caregiver has a strong commitment to caring for the child;

"(3) The child's parent does not reside in the relative caregiver's home; provided, that a parent may reside in the home without disqualifying the relative caregiver from receiving a subsidy if:

"(A) The parent has designated the relative caregiver to be the child's standby guardian pursuant to Chapter 48 of Title 16;

"(B) The parent is a minor enrolled in school; or

"(C) The parent is a minor with a medically verifiable disability under criteria prescribed by the Mayor pursuant to section 106;

"(4) The relative caregiver and all adults residing in the relative caregiver's home have submitted to criminal background checks;

"(5) The relative caregiver is a resident of the District as defined by section 503 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.03);

"(6) The relative caregiver has applied for Temporary Assistance for Needy Families benefits for the child;

"(7) The relative caregiver has entered into a subsidy agreement that includes a provision that no payments received under the agreement shall inure to the benefit of the child's parent but shall be solely for the benefit of the child;

"(8) The relative caregiver is not currently receiving a guardianship or adoption subsidy for the child;

"(9) The relative caregiver has provided a signed statement, sworn under penalty of perjury, that the information provided to establish eligibility pursuant to this section or rules promulgated pursuant to section 106 is true and accurate to the best belief of the relative caregiver applicant; and

"(10) The relative caregiver has met any additional requirements of rules promulgated pursuant to section 106.

"(b)(1) The Mayor shall recertify the eligibility of each relative caregiver receiving a subsidy on at least an annual basis.

"(2) For the purposes of the recertification, a relative caregiver may be required to provide a signed statement, sworn under penalty of perjury, that the information provided to establish continued eligibility pursuant to this section or any rules issued pursuant to section 106 remains true and accurate to the best belief of the relative caregiver.

"(c)(1) The Mayor shall terminate subsidy payments to a relative caregiver at any time if:

"(A) The Mayor determines the relative caregiver no longer meets the eligibility requirements established by this section or by rules issued pursuant to section 106; or

"(B) There is a substantiated finding of child abuse or neglect against the relative caregiver resulting in the removal of the child from the relative caregiver's home.

"(2) A relative caregiver whose subsidy payments are terminated as a result of the removal of the child from the relative caregiver's home may reapply if the child has been returned to the relative caregiver's home.

"(d) Eligibility for subsidy payments under this section may continue until the child reaches 18 years of age.

"(e) The determination of whether to transfer a subsidy is solely within the discretion of the Mayor.

"(f) An applicant whose application for a subsidy transfer has been denied shall not be entitled to a hearing under Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).

"(g) A relative caregiver whose subsidy has been terminated shall be entitled to a fair hearing under the applicable provisions of Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*); provided, that a relative caregiver shall not be entitled to a hearing if the termination of a subsidy is based upon the unavailability of appropriated funds.

"(h) Any statement under this section made with knowledge that the information set forth in the statement is false shall be subject to prosecution as a false statement under section 404(a) of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405(a)).".

(c) Section 104 (D.C. Official Code § 4-251.04) is amended as follows:

(1) Subsection (b) is amended by striking the word "grandparent" and inserting the phrase "grandparent or relative caregiver" in its place.

(2) Subsection (c) is amended by striking the word "grandparent" and inserting the phrase "grandparent or relative caregiver" in its place.

(d) Section 105 (D.C. Official Code § 4-251.05) is amended by adding a new paragraph (5A) to read as follows:

"(5A) The number of subsidies transferred to a relative caregiver pursuant to section 103a.".

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.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 8, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-509

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 8, 2014

To establish, on an emergency basis, the Pepco Cost-Sharing Fund for DC PLUG, into which the District Department of Transportation shall deposit funds received from Potomac Electric Power Company, to be used solely for purposes authorized by the Electric Company Infrastructure Improvement Financing Act of 2014 for the District of Columbia Power Line Undergrounding initiative.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Pepco Cost-Sharing Fund for DC PLUG Establishment Emergency Act of 2014".

Sec. 2. Pepco Cost-Sharing Fund for DC PLUG.

(a) There is established as a special fund the Pepco Cost-Sharing Fund for DC PLUG ("Fund"), which shall be administered by the Director of the District Department of Transportation in accordance with subsection (c) of this section.

(b) The Fund shall consist of transfers from the Potomac Electric Power Company to facilitate cost-sharing for the District of Columbia Power Line Undergrounding ("DC PLUG") initiative.

(c) The Fund shall be used to pay for any purpose authorized by the Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1311.01 *et seq.*), for the DC PLUG initiative.

(d) The money deposited into the Fund, and interest earned, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 8, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-510

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 8, 2014

To amend, on an emergency basis, section 47-1812.08 of the District of Columbia Official Code to exclude the standard deduction from withholding calculations for an employer.

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

Sec. 2. Section 47-1812.08(b) of the District of Columbia Official Code is amended by adding a new paragraph (1A) to read as follows:

"(1A) Notwithstanding which method of determination for withholding set forth in paragraph (1) of this subsection is used, no allowance for the standard deduction shall be permitted.".

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
December 8, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-511

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 8, 2014

To amend the Housing Production Trust Fund Act of 1988 to authorize the Housing Production Trust Fund to be funded at a level of at least $100 million annually.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Housing Production Trust Fund Baseline Funding Amendment Act of 2014".

Sec. 2. Section 3 of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2802), is amended by adding a new subsection (c-1) to read as follows:

"(c-1) There is authorized to be appropriated at least $100 million annually, from all sources, to be deposited into, and expended from, the Fund.".

Sec. 3. Applicability.

This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Sec. 4. 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. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as

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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
December 8, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-512

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 10, 2014

To amend Chapter 10 of Title 47 of the District of Columbia Official Code to exempt from taxation certain property owned by SeVerna, LLC, and to provide equitable real property tax relief to SeVerna, LLC.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "SeVerna, LLC, Real Property Tax Exemption and Real Property Tax Relief Act of 2014".

Sec. 2. Chapter 10 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new section designation to read as follows:

"47-1095. SeVerna, LLC, Lot 861, Square 621.

(b) A new section 47-1095 is added to read as follows:

"§ 47-1095. SeVerna, LLC, Lot 861, Square 621.

"The real property described as Lot 861, Square 621 owned by SeVerna, LLC, a nonprofit corporation, shall be exempt from all taxation for a period of 15 years, beginning with tax year 2013, so long as the real property continues to be owned by SeVerna, LLC, and is not used for commercial purposes, subject to the provisions of §§ 47-1005, 47-1007, and 47-1009.".

Sec. 3. The Council of the District of Columbia orders that all real property taxes, interest, penalties, fees, and other related charges assessed against SeVerna, LLC, on real property located at Lot 861, Square 621 for a period of 15 years beginning in tax year 2013 be forgiven and any payment made for this period be refunded.

Sec. 4. Applicability.

This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

ENROLLED ORIGINAL

Sec. 5. 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. 6. 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
December 10, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-513

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 10, 2014

To approve, on an emergency basis, the disposition of District-owned real property, formerly known as the Stevens School, located at 1050 21st Street, N.W., and known for tax and assessment purposes as Lot 0876 in Square 0073.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Stevens School Disposition Emergency Approval Act of 2014".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Developer" means The John Akridge Development Company, with a business address of 601 13th Street, N.W., Suite 300 North, Washington, D.C. 20005 and Argos Group, LLC, a District of Columbia limited liability company with a business address of 631 D Street, N.W., Suite 638, Washington, D.C. 20004, or an entity formed by these businesses.

(2) "Lessees" means the Developer, its successor, one of its affiliates, or assignees approved by the Mayor, and the educational user approved by the Mayor.

(3) "Property" means the real property located at 1050 2151 Street, N.W., and known for tax and assessment purposes as Lot 0876 in Square 0073.

Sec. 3. Approval of disposition.

(a) Pursuant to section 1 of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801), the Mayor transmitted to the Council a request for approval of the disposition of the Property to the Lessees and all required documentation on May 30, 2014 (the Stevens School Disposition Approval Resolution of 2014, introduced on May 30, 2014 (P.R. 20-820)).

(b) The Council approves the disposition of the Property.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer, dated May 22, 2014, as the fiscal impact statement required by section 602(c)(3) of the District of Columbia

ENROLLED ORIGINAL

Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 10, 2014

ENROLLED ORIGINAL

A RESOLUTION

20-681

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 18, 2014

To declare the sense of the Council to urge the Congress of the United States to fund the development and implementation of a comprehensive health care delivery system to enhance the level of specialty care for New Hampshire's veterans.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Sense of the Council on Support of Comprehensive Health Care Delivery for New Hampshire's Veterans Resolution of 2014".

Sec. 2. The Council finds that:

(1) The District is particularly grateful for the sacrifice of its veterans, appreciates the high-quality of medical care that District veterans have access to within the District, and therefore believes all veterans should have access to high-quality medical care close to where they reside.

(2) New Hampshire has approximately 131,000 veterans, with the majority over the age of 65, who served their country bravely and risked their lives to preserve our country's freedom and democracy. Their sacrifices on our behalf are deserving of an upgraded medical delivery system to meet their healthcare needs.

(3) New Hampshire is a largely rural state, with limited access to the interstate highway system, requiring veterans who may be ill and elderly and reside in rural communities to travel many miles to appointments for even minor medical procedures.

(4) Many New Hampshire veterans over the age of 65 do not have access to a primary care provider to support their medical needs.

(5) Due to limited access to interstate highways, inclement weather, and lack of proper transportation in rural communities, many veterans miss essential checkups and therapies.

(6) Receiving timely medical treatment would improve the overall health and quality of life of veterans by preventing numerous strokes, by-passes, amputations, and other costly, but preventable conditions.

(7) Due to the lack of a full-service veterans' hospital in New Hampshire, many veterans are required to travel to Vermont, Massachusetts, Maine, and Rhode Island for medical treatment.

(8) Veterans residing in rural communities deserve the same level of care as veterans residing in other areas of the states.

ENROLLED ORIGINAL

(9) Adequate and high-quality care of all veterans should be a concern to all Americans.

Sec. 3. It is the sense of the Council that the Congress of the United States and the United States Department of Veterans Affairs ("Department") should fulfill the Department's goal of providing excellent in-patient care by increasing the types of, and access to, specialty care at a full-service Manchester VA Medical Center, or by developing a pilot program to utilize a veteran's medical card for use in New Hampshire's medical facilities in order to provide better care to veterans residing in rural areas, or by the establishment of additional community-based outpatient clinics, or mobile clinics, for veterans' medical and mental needs, or where cost effective, by entering into private service contracts with the goal of increasing services and reducing travel time to ensure that access to health care is available when it is needed.

Sec. 4. The Chairman of the Council of the District of Columbia shall transmit copies of this resolution, upon its adoption, to the President of the United States, the Secretary of the United States Department of Veterans Affairs, the United States House and Senate Committees on Veterans' Affairs, and to the leaders of the New Hampshire House and Senate.

Sec. 5. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A RESOLUTION

20-682

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 18, 2014

To confirm the appointment of Ms. Barbara L. Deutsch to the District of Columbia Commemorative Works Committee.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Commemorative Works Committee Barbara Deutsch Confirmation Resolution of 2014".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Ms. Barbara L. Deutsch
558 Regent Place, N.E.
Washington, D.C. 20017
(Ward 5)

as a citizen member of the District of Columbia Commemorative Works Committee, established by section 412 of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective April 4, 2001 (D.C. Law 13-275; D.C. Official Code § 9-204.12), for a term to end July 22, 2016.

Sec. 3. The Council shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-683

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 18, 2014

To approve the establishment of a shift differential for Metropolitan Police Department captains and lieutenants.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Metropolitan Police Department Captain and Lieutenant Shift Differential Approval Resolution of 2014".

Sec. 2. Pursuant to section 1106 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 § 1-611.06), the Council of the District of Columbia approves the proposed compensation system change recommended by the Mayor for a shift differential for Metropolitan Police Department captains and lieutenants, which was transmitted by the Mayor to the Council on September 30, 2014.

Sec. 3. Transmittal.

The Chairman of the Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the Mayor and the Chief of Police, Metropolitan Police Department.

Sec. 4. 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. 5. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-685

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 18, 2014

To approve the proposed Mid City East Small Area Plan.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Mid City East Small Area Plan Approval Resolution of 2014".

Sec. 2. Pursuant to section 4(c)(4) of the District of Columbia Comprehensive Plan Act of 1984 Land Use Element Amendment Act of 1984, effective March 16, 1985 (D.C. Law 5-187; D.C. Official Code § 1-306.03(c)(4)), the Mayor transmitted to the Council the proposed Mid City East Small Area Plan, dated October 10, 2014 ("Plan").

Sec. 3. The Council finds that:

(1) The Plan area is located in Wards 1, 5, and 6, and includes the neighborhoods of Bates/Truxton Circle, Bloomingdale, Eckington, Hanover, LeDroit Park, and Sursum Corda, as well as portions of Edgewood and Stronghold. The planning area is defined by the following boundaries: Channing Street, N.W., to the north to The Glenwood Cemetery, south to Bryant Street N.E., west to North Capitol Street, N.E., south to V Street, N.E., east to Rhode Island Avenue, N.E., northeast to 4th Place, N.E., south to W Street, N.E., east to 5th Place, N.E., south to V Street, N.E., east to CSX Railroad Tracks, south to R Street, N.E., west to Eckington Place, N.E., south to Q Street, N.E., west to North Capitol Street, N.E., south to L Street, N.W., west to New Jersey Avenue, N.W., north to Florida Avenue, N.W., west to 6th Street, N.W., north to U Street, N.W., east to 5th Street, N.W., north to Oakdale Place, N.W., east to 4th Street, N.W., north to V Street, N.W., west to 5th Street, N.W., north to W Street, N.W., east midblock between 4th Street, N.W., and 2nd Street, N.W., north to Bryant Street, N.W., east to 1st Street, N.W., and north to Channing Street, N.W.

(2) The Plan was initiated in February of 2013 by the Office of Planning. The Comprehensive Plan for the National Capital: District Elements calls for the preparation of a small area plan/revitalization strategy for the North Capitol/Florida Avenue business district, including recommendations for streetscape improvements, land use and zoning changes, parking management and pedestrian safety improvements, retail development, and opportunities for new housing and public services. (Policy MC-2.72: Eckington/Bloomingdale 2017.6).

(3) The proposed Plan was published and made available to the public on July 7, 2014, and a Mayoral hearing was conducted on July 29, 2014.

ENROLLED ORIGINAL

(4) The purpose of the Plan is to provide a framework for conservation, development, sustainability and connectivity in the neighborhoods of Bates/Truxton Circle, Bloomingdale, Eckington, Hanover, LeDroit Park, and Sursum Corda, as well as portions of Edgewood and Stronghold. The vision is to improve quality of life and enhance neighborhood amenities and character while supporting a community of culturally, economically, and generationally diverse residents.

(5) The Plan uses specific land use analysis and incorporates the broadest range of planning techniques and practical solutions to achieve the District's goals and objectives.

(6) The Plan goals are to revitalize North Capitol Street, Rhode Island Avenue, and Florida Avenue as thriving and pedestrian friendly corridors, and preserve the individual character of Bates/Truxton Circle, Bloomingdale, Eckington, Hanover, LeDroit Park, and Sursum Corda. The Plan outlines strategies to provide recommendations under 6 core themes as follows:

(A) Neighborhood Character – opportunities to conserve the architectural character and cultural resources of each neighborhood;

(B) Commercial Revitalization – opportunities to revitalize neighborhood commercial areas including retail, dining, and small office space;

(C) Redevelopment Opportunities and Housing – opportunities to improve the neighborhoods through infill, new development, and the provision of affordable housing;

(D) Neighborhood Placemaking and Public Realm – opportunities to enhance neighborhood identity and improve sidewalks and public spaces;

(E) Parks, Green Space, and Stormwater – opportunities to add or enhance parks and green space while reducing stormwater runoff; and

(F) Connectivity – opportunities to improve connectivity and mobility between neighborhoods and from the neighborhoods to other District destinations.

(7) The Plan defines near and mid-term strategies for revitalization and articulates broad development goals, urban design, and definitive priority actions deemed critical to the revitalization of the neighborhoods and commercial corridors within the Plan area.

(8) Once approved, the Plan will provide supplemental guidance to the Zoning Commission and other District agencies in carrying out the policies of the District of Columbia Comprehensive Plan.

Sec. 4. The Plan, as submitted, is approved by the Council as a small area action plan.

Sec. 5. 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. 6. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-686

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 18, 2014

To confirm the appointment of Mr. F. Thomas Luparello as the Director of the Department of Employment Services.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Director of the Department of Employment Services F. Thomas Luparello Confirmation Resolution of 2014".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Mr. F. Thomas Luparello
2301 Champlain Street, N.W.
Apt. 314
Washington, D.C. 20012
(Ward 1)

as the Director of the Department of Employment Services, established by Reorganization Plan No. 1 of 1980, effective April 17, 1980, and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01), to serve at the pleasure of the Mayor.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-687

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 28, 2014

To approve the borrowing of funds by the District through the issuance and sale of income tax secured revenue bonds and general obligation bonds in an aggregate principal amount not to exceed $1,092,763,726.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as "Fiscal Year 2015 Income Tax Secured Revenue Bond and General Obligation Bond Issuance Approval Resolution of 2014".

Sec. 2.(a) Pursuant to and in accordance with D.C. Official Code § 47-335.01, the General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 1999 -2004 Authorization Act of 1999, effective July 29, 1999 (D.C. Law 13-22; D.C. Official Code § 1-204.61, note); the General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2002 -2007 Authorization Act of 2002, effective March 25, 2003 (D.C. Law 14-214; D.C. Official Code § 1-204.61, note); the General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2007-2012 Authorization Act of 2006, effective March 6, 2007 (D.C. Law 16-212; D.C. Official Code § 1-204.61, note), and the General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2013-2018 Authorization Act of 2012, effective March 19, 2013 (D.C. Law 19-231) (the “Bond Acts”), and Subchapter II-D of the District of Columbia Official Code (§ 47-340.26 *et seq.*) ("Income Tax Bond Act"), the Council approves the issuance and sale of:

Income tax secured revenue bonds and general obligation bonds in an aggregate principal amount not to exceed $1,092,763,726 to fund the following capital projects, as that term is defined in the Income Tax Bond Act or the Bond Acts, plus all costs and expenses authorized by the Income Tax Bond Act or the Bond Acts, including, but not limited to, reimbursing amounts temporarily advanced from the General Fund of the District of Columbia, any enterprise fund, or other fund or account of the District, and all costs and expenses of issuing and delivering the bonds, including, but not limited to, underwriting, rating agency fees, legal fees, accounting fees, financial advisory fees, bond insurance and other credit enhancements, liquidity enhancements, printing costs and expenses, capitalized interest, establishment of debt service or other reserve funds related to the bonds, the payment of costs of contracts described in the Income Tax Bond Act or the Bond Acts, and the payments of other debt program related costs as provided in the related agreements:

ENROLLED ORIGINAL

Owner Agency	Project Number	Project Title	Implementing Agency	Borrowing $
COUNCIL	WIL	John A. Wilson Building	COUNCIL	325,000
Total - Council of the District of Columbia				**325,000**
DGS	AA3	Consolidated Laboratory Facility	DGS	1,649,239
DGS	N14	One Judiciary Square	DGS	2,760,053
DGS	PL1	Hazardous Material Abatement/ADA	DGS	5,158,520
DGS	PL4	City-Wide Physical Access Control Systems	DGS	3,103,156
DGS	PL6	HVAC Repair Renovation Pool	DGS	68,661
DGS	PL9	Energy Retrofitting & System Replacement	DGS	7,455,744
DGS	SM4	Homeless No More	DGS	2,674,726
Total - Department of General Services				**22,870,099**
OCFO	BF2	CFO$olve Financial Application	OCFO	429,148
OCFO	BF3	SOAR Modernization	OCFO	10,000,000
Total - Office of the Chief Financial Officer				**10,429,148**
SECRETARY	AB1	Archives	DGS	900,000
Total - Office of the Secretary				**900,000**
ZONING	JM1	Zoning Information Technology System	OZ	175,000
Total - Office of Zoning				**175,000**
DCOA	A05	Ward 6 Senior Wellness Center	DGS	10,284
DCOA	EA3	Washington Center For Aging Services Renovation	DGS	697,878
Total - DC Office on Aging				**708,163**
DCPL	CAV	Capitol View Library	DCPL	4,500,000
DCPL	CPL	Cleveland Park Library	DCPL	5,625,000
DCPL	FGR	Francis A. Gregory Library	DCPL	33,916
DCPL	FS3	Renovation At Georgetown Library	DCPL	33,847
DCPL	ITM	Information Technology Modernization	DCPL	385,208
DCPL	LB3	General Improvements - Libraries	DCPL	5,000,000
DCPL	MCL	Martin Luther King Jr. Memorial Central Library	DCPL	14,500,000
DCPL	NEL	Northeast Library	DCPL	1,770,570
DCPL	PAL	Palisades Library	DCPL	6,700,000
DCPL	WAH	Washington Highlands	DCPL	34,222
Total - DC Public Library				**38,582,762**
DOES	UIM	UI Modernization Project - Federal	DOES	3,500,000
Total - Department of Employment Services				**3,500,000**

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DCRA	EB3	Vacant Property Inspection And Abatement	DCRA	171,593
DCRA	ISM	IT Systems Modernization	DCRA	3,592,834
Total - Department of Consumer and Regulatory Affairs				**3,764,428**
DHCD	40	Property Acquisition & Disposition	DHCD	1,296,602
DHCD	503	Eastgate Hope VI	DHCD	2,523,521
Total - Department of Housing and Community Development				**3,820,123**
DMPED	AMS	McMillan Site Redevelopment	DMPED	4,095,561
DMPED	ASC	Skyland Shopping Center	DMPED	1,404,551
DMPED	AWR	Saint Elizabeths E Campus Infrastructure	DMPED	5,000,000
DMPED	AWT	Walter Reed Redevelopment	DMPED	400,000
DMPED	EB0	New Communities	DMPED	8,000,000
DMPED	EB4	WASA New Facility	DMPED	3,000,000
DMPED	STH	Strand Theatre	DMPED	1,000,000
Total - Deputy Mayor for Economic Development				**22,900,112**
MPD	CTV	Tactical Village Training Facility	DGS	18,295
MPD	PEQ	Specialized Vehicles - MPD	MPD	4,077,531
MPD	PL1	MPD Scheduled Capital Improvements	DGS	2,800,000
MPD	PLR	Renovation of MPD District Stations	DGS	3,000,000
MPD	PLT	Crime Fighting Technology	MPD	282,698
Total - Metropolitan Police Department				**10,178,524**
FEMS	206	Fire Apparatus	FEMS	3,000,000
FEMS	LC4	Engine 22 Firehouse Replacement	DGS	4,103,025
FEMS	LD1	E-28 Complete Modernization/Renovation	DGS	1,823,728
FEMS	LD2	E-29 Complete Renovation/Modernization	DGS	1,765,866
FEMS	LD8	EVOC Course	FEMS	808,157
FEMS	LE7	Engine 27 Major Renovation	DGS	4,000,000
Total - Fire and Emergency Medical Services				**15,500,776**
DOC	CEV	DOC Elevator Refurbishment	DGS	33,708
DOC	CGN	General Renovations at DOC Facilities	DGS	1,500,000
DOC	CR0	Inmate Processing Center	DGS	6,511,015
DOC	MA2	Elevator/Escalator Pool	DGS	5,240
Total - Department of Corrections				**8,049,963**
DCPS	BRK	Brookland MS Modernization	DGS	8,000,000
DCPS	GAH	Healthy School Yards	DGS	639,395
DCPS	GI0	Special Education Classrooms	DGS	1,442,386

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DCPS	GI5	Rose/Reno School Small Cap Project	DGS	2,750,000
DCPS	GM1	Major Repairs/Maintenance - DCPS	DGS	13,572,077
DCPS	GM3	Project Management/Professional Fees - DCPS	DGS	19,867,004
DCPS	JOH	Johnson MS Renovation/Modernization	DGS	7,886,000
DCPS	N50	IT Products and Services	DCPS	14,245
DCPS	N80	DCPS IT Infrastructure Upgrade	OCTO	2,000,000
DCPS	NA6	Ballou SHS	DGS	5,000,000
DCPS	NR9	Roosevelt HS Modernization	DGS	75,849,726
DCPS	NX3	Cardozo HS Modernization/Renov	DGS	3
DCPS	NX6	W Wilson SHS Modernization/Renovation	DGS	4,116
DCPS	NX8	Coolidge HS Modernization/Renovation	DGS	3,000,000
DCPS	SG1	Window Replacement - DCPS	DGS	613,000
DCPS	SG3	Maintenance Improvements	DGS	8,138,513
DCPS	SK1	Marie Reed ES (Stadium)	DGS	982,901
DCPS	T22	DCPS DCSTARS IT Upgrade	OCTO	2,157,853
DCPS	TB2	Burroughs ES Modernization/Renovation	DGS	627,829
DCPS	YY1	Modernization/Renovation - DCPS	DGS	291,700,774
DCPS	YY6	Planning - DCPS	DGS	13,654
Total - District of Columbia Public Schools				**444,259,474**
OSSE	GD2	OSSE Facility Improvements	OSSE	1,677
OSSE	N31	DC STAT Service Oriented ERP	OCTO	96,642
OSSE	SIS	Single State-Wide Student Information System	OSSE	2,028,077
Total - Office of the State Superintendent of Education				**2,126,396**
UDC	UG7	Renovation of University Facilities	UDC	15,040,397
Total - University of the District of Columbia				**15,040,397**
SET	BU0	Vehicle Replacement	SET	3,637,300
SET	BU4	Bus Facility Upgrades	SET	3,740,000
SET	BU5	DOT GPS System	SET	1,000,000
Total - Special Education Transportation				**8,377,300**
DPR	AW3	Marvin Gaye Recreation Center	DGS	41,551
DPR	FTD	Fort Davis Recreation Center	DGS	3,000,000
DPR	HRD	Hardy Recreation Center	DGS	500,000
DPR	IVY	Ivy City Community Center	DGS	1,925,000

DPR	NPR	IT Infrastructure - DPR	OCTO	750,000
DPR	Q10	Fort Greble Recreation Center	DGS	1,000,000
DPR	Q11	Hillcrest Recreation Center	DGS	1,500,000
DPR	QD7	Fort DuPont Ice Arena Replacement	DGS	500,000
DPR	QE2	Ridge Road Recreation Center	DGS	600,418
DPR	QF4	Benning Park Recreation Center Rehab	DGS	1,500,000
DPR	QG6	Kenilworth Parkside Recreation Center	DGS	2,500,000
DPR	QI2	Marvin Gaye Recreation Center	DGS	3,500,000
DPR	QI8	Guy Mason Rehabilitation	DGS	31,166
DPR	QI9	Rosedale Recreation Center	DGS	143,174
DPR	QJ9	Acquisition and Development of Boys and Girls Clubs	DGS	3,125,000
DPR	QK3	Fort Stanton Recreation Center	DGS	1,019,706
DPR	QM6	Raymond Recreation Center	DGS	202,359
DPR	QM7	Chevy Chase Recreation Center	DGS	579
DPR	QM8	Parks and Recreation Centers	DGS	13,500,270
DPR	QN5	Langdon Community Center Redevelopment	DGS	136,078
DPR	QN6	Upshur/Hamilton Community Parks	DGS	1,409
DPR	QN7	Athletic Field and Park Improvements	DGS	6,674,958
DPR	QN8	Banneker Baseball Center	DGS	122,136
DPR	R67	Bald Eagle Recreation Center	DGS	84,645
DPR	RG0	General Improvements - DPR Facilities	DGS	5,795,722
DPR	RR0	General Improvements	DGS	108,669
DPR	SET	Southeast Tennis and Learning Center	DGS	4,000,000
DPR	SQ2	Square 238 DRP Facility	DGS	500,000
DPR	THP	Therapeutic Recreation Center	DGS	1,500,000
DPR	URA	Urban Agriculture	DGS	250,000
DPR	WBR	Edgewood Recreation Center	DGS	14,400,000
DPR	WD3	Ward 3 Outdoor Pool	DGS	1,000,000
Total - Department of Parks and Recreation				**69,912,838**
DOH	HC1	DC Animal Shelter	DGS	67,771
DOH	HN7	Renovation of Women's Service Clinic	DGS	2,016
Total - Department of Health				**69,786**
DHCF	AP1	Predictive Analytics IT System	DHCF	125,000

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DHCF	CM1	Replace Case Management System	DHCF	125,000
DHCF	HI1	District Operated Health Information System	DHCF	3,145,040
DHCF	MPM	MMIS System Upgrade	DHCF	2,400,000
DHCF	UMC	East End Medical Center	DHCF	15,126,000
Total - Department of Health Care Finance				**20,921,040**
DHS	CMS	Case Management System - GO Bond	DHS	12,000,000
Total - Department of Human Services				**12,000,000**
DYRS	SH7	DYRS Campus Upgrades	DGS	20,015
Total - Department of Youth Rehabilitation Services				**20,015**
DDOT	AD0	Lighting Asset Management	DDOT	6,297
DDOT	AD3	Streetlight Management & Ped Safety	DDOT	2,156,000
DDOT	AW0	S Capitol St/Frederick Douglass Bridge	DDOT	43,188,289
DDOT	CA3	Stormwater Management	DDOT	599,488
DDOT	CAL	Curb and Sidewalk Rehab	DDOT	8,093,957
DDOT	CB0	Replace and Upgrade Attenuators and Guiderails	DDOT	3,844
DDOT	CD0	Bridge Design Consulting	DDOT	20,709
DDOT	CDT	Railroad Bridges	DDOT	10,340
DDOT	CE3	Bridge and Alley Maintenance	DDOT	5,292,553
DDOT	CEL	Alley Rehab	DDOT	10,000,000
DDOT	CG3	Greenspace Management	DDOT	11,614,391
DDOT	CI0	Traffic Signal Systems	DDOT	6,728
DDOT	CIR	Circulator Buses	DDOT	7,702,500
DDOT	CM0	DDOT Climate Change Change/Air Quality Plan	DDOT	7,478
DDOT	ED0	11th Street Bridge Park	DDOT	2,003,643
DDOT	ED3	Kennedy Street Streetscapes	DDOT	1,250,000
DDOT	EDL	DuPont Crown Park Infrastructure	DDOT	10,187,698
DDOT	EDS	Great Streets	DDOT	3,384,144
DDOT	EW0	11th Street Bridge	DDOT	158,304
DDOT	FLD	Prevention of Flooding in Bloomingdale	DDOT	2,000,000
DDOT	MNT	Road Maintenance	DDOT	2,318
DDOT	MRR	Major Rehabilitation, Reconstruction and Replacement	DDOT	42,019
DDOT	NPO	Non-Participating Highway Trust Fund Support	DDOT	4,481,447
DDOT	PED	Intra-District Econ for Pedestrian Bridge	DDOT	681,718

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DDOT	PLU	Power Line Undergrounding	DDOT	4,636,000
DDOT	PM0	Materials Testing Lab	DDOT	2,300,000
DDOT	SA3	H St./Benning/K St. Streetcar Line	DDOT	36,011,922
DDOT	SR0	Streetscapes	DDOT	2,221,482
DDOT	SR3	Local Streets - Wards 1-8	DDOT	6,817,834
DDOT	TRF	Traffic Operations Center	DDOT	2,000,000
DDOT	TRL	Trails	DDOT	4,250,000
Total - District Department Of Transportation				**171,131,105**
WMATA	SA2	Metrobus	WMATA	5,514,686
WMATA	SA3	WMATA Fund - PRIIA	WMATA	67,297,766
WMATA	SA5	WMATA CIP Contribution	WMATA	90,526,000
WMATA	TOP	WMATA Project Development	WMATA	6,521,695
Total - Mass Transit Subsidies				**169,860,147**
DDOE	HMR	Hazardous Material Remediation - DDOE	DDOE	4,000,000
DDOE	K20	Inspections, Compliance and Enforcement IT System	OCTO	1,500,000
DDOE	SWM	Storm Water Project	DDOE	4,640,678
Total - District Department Of the Environmental				**10,140,678**
DPW	`EQ9	Heavy Equipment Acquisition - DPW	DPW	2,000,000
DPW	PS1	Blue Plains District Impound Lot	DPW	230,085
DPW	SW2	Benning Road Solid Waste Transfer	DPW	662,755
Total - Department of Public Works				**2,892,841**
DMV	RID	Secure Credentialing	DMV	1,009,267
Total - Department of Motor Vehicles				**1,009,267**
DBH	HX5	New Mental Health Hospital	DBH	637,540
DBH	XA5	Renovation SHE Buildings	DBH	7,100
Total - Department of Behavioral Science				**644,640**
OCTO	1BT	DC CAN	OCTO	662,006
OCTO	1SL	DC Firstnet (SLIGP)	OCTO	46,367
OCTO	N16	DC Wide Area Network (WAN)	OCTO	641,613
OCTO	N17	Cyber Security Modernization	OCTO	1,152,244
OCTO	N18	Data Center Facility Upgrade	OCTO	451,612
OCTO	N25	Data Center Relocation - GO Bond	OCTO	523,058
OCTO	N25	Server Consolidation - GO Bond	OCTO	500,000
OCTO	N31	CAPSTAT	OCTO	2,500,000
OCTO	N36	Pool for SMP Projects	OCTO	1,596,460
OCTO	N36	Transportation Infrastructure Modernization	OCTO	500,000

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OCTO	N90	DC Government New Data Center Build-out	OCTO	3,500,000
OCTO	N91	DC Government Citywide IT Security Program	OCTO	2,000,000
OCTO	N92	Citywide Disk Based Backup Infrastructure	OCTO	445,022
OCTO	N93	Enterprise Computing Device Management	OCTO	700,000
OCTO	N95	DC.Gov Web Transformation	OCTO	1,491,560
OCTO	ZA1	DC GIS Capital Investment	OCTO	300,000
OCTO	ZB1	Enterprise Resource Planning	OCTO	2,610,617
OCTO	ZB2	Enterprise Integration Projects	OCTO	33,145
Total - Office of the Chief Technology Officer				**19,653,704**
OUC	PL4	Underground Commercial Power Feed to UCC	DGS	1,000,000
OUC	UC2	IT and Communications Upgrades	OUC	2,000,000
Total - Office of Unified Communications				**3,000,000**
Grand Total				**1,092,763,726***

*Numbers may not sum up due to rounding.

(b) The capital projects listed in subsection (a) of this section have been authorized pursuant to section 446 of the District of Columbia Home Rule Act, approved December 24, 1973 (Pub. L. No. 93-198; 87 Stat. 801; D.C. Official Code § 1-204.46), the District of Columbia Appropriations Act, 2000, approved November 29, 1999 (Pub. L. No. 106-113; 113 Stat. 1501), the District of Columbia Appropriations Act, 2001, approved November 22, 2000 (Pub. L. No. 106-522; 114 Stat. 2457), the District of Columbia Appropriations Act, 2002, approved December 21, 2001 (Pub. L. No. 107-96; 115 Stat. 923), the District of Columbia Appropriations Act, 2003, approved February 20, 2003 (Pub. L. No. 108-7; 117 Stat. 11), the District of Columbia Appropriations Act, 2004, approved January 23, 2004 (Pub. L. No. 108-199; 118 Stat. 3), the District of Columbia Appropriations Act, 2005, approved October 18, 2004 (Pub. L. No. 108-335; 118 Stat. 1322), the District of Columbia Appropriations Act, 2006, approved November 30, 2005 (Pub. L. No 109-115; 119 Stat. 2508), the Revised Continuing Appropriations Resolution, 2007, approved February 15, 2007 (Pub. L. No. 110-5; 121 Stat. 8), the Continuing Appropriations Resolution, 2008, approved September 29, 2007 (Pub. L. No. 110-92; 121 Stat. 989), the District of Columbia Appropriations Act, 2008, approved December 26, 2007 (Pub. L. No. 110-161; 121 Stat. 1990), the Continuing Appropriations Resolution, 2009, approved September 30, 2008 (Pub. L. No. 110-329; 122 Stat. 3574), the District of Columbia Appropriations Act, 2009, approved March 11, 2009 (Pub. L. No.111-8; 123 Stat. 524), the Continuing Appropriations Resolution, 2010, approved October 1, 2009 (Pub. L. No. 111-68; 123 Stat. 2023), the Further Continuing Appropriations Resolution, 2010, approved October 30, 2009 (Pub. L. No. 111-88; 123 Stat. 2904), the District of Columbia Appropriations Act, 2010, approved December 16, 2009 (Pub. L. No. 111-117; 123 Stat. 3034), as extended by the Department of Defense and Full-Year Continuing Appropriations Act, 2011, approved April 15, 2011 (Pub. L. No. 112-10; 125 Stat. 38), the District of Columbia Appropriations Act, 2012,

approved December 23, 2011 (Pub. L. No.112-74, 125 Stat. 903); the Continuing Appropriations Resolution 2013, approved September 28, 2012 (Pub. L. No. 112-175; 126 Stat. 1313); the Consolidated and Further Continuing Appropriations Act, 2013, approved March 26, 2013 (Pub. L. No. 113-6; 127 Stat. 198); the Continuing Appropriations Act, 2014, approved October 17, 2013 (Pub. L. No. 113-46; 127 Stat 558); the Consolidated Appropriations Act, 2014, approved January 17, 2014 (Pub. L. No. 113-76; 128 Stat 5); the Continuing Appropriations Resolution, 2015, approved September 19, 2014 (Pub. L. No. 113-164; 128 Stat. 1867); and are capital projects for which the District of Columbia is authorized to incur indebtedness under the Bond Acts, and the Income Tax Bond Act.

(c) The Chief Financial Officer shall determine whether income tax secured revenue bonds or general obligation bonds will be issued to finance the capital projects listed in subsection (a) of this section.

Sec. 3. If the funds allocated to any agency pursuant to this resolution exceed the amount required by that agency to complete any authorized capital project listed in section 2(a) for that agency, the excess funds shall be made available to finance other capital projects approved by a prior or subsequent Council bond issuance resolution or act.

Sec. 4. Pursuant to sections 7 and 8 of the Bonds Acts, Section 2 of the Income Tax Bond Act, and other applicable law, the Council approves the execution and delivery by the Mayor, or the Chief Financial Officer, on behalf of the District, of any agreement, document, contract, and instrument (including any amendment of or supplement to any such agreement, document, contract, or instrument) in connection with the issuance, sale, and delivery of District of Columbia general obligation bonds or income tax secured revenue bonds pursuant to the Bond Acts or the Income Tax Bond Act.

Sec. 5. The Secretary to the Council shall submit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 6. 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. 7. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-688

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 18, 2014

To declare the existence of an emergency with respect to the need to exclude the standard deduction from withholding calculations for an employer.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Standard Deduction Withholding Clarification Emergency Declaration Resolution of 2014".

Sec. 2. (a) The Fiscal Year 2012 Budget Support Technical Clarification Temporary Amendment Act of 2011, effective October 11, 2011 (D.C. Law 19-53; 58 DCR 8954), amended section 47-1812.08 of the District of Columbia Official Code to exclude the standard deduction from withholding calculations for employers.

(b) There is an urgent need to reestablish this exclusion. Not acting expeditiously will result in a substantial one-time revenue loss for Fiscal Year 2015 and ongoing losses in lesser amounts in subsequent years.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Standard Deduction Withholding Clarification Emergency Amendment Act of 2014 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-689

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 18, 2014

To declare the existence of an emergency with respect to the need to allow the Grandparent Caregivers Program subsidy to be transferred to a relative caregiver when a grandparent is no longer able to care for the child.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Grandparent Caregivers Program Subsidy Transfer Emergency Declaration Resolution of 2014".

Sec. 2. (a) The Grandparent Caregivers Program ("GCP") was established by the Grandparent Caregivers Pilot Program Establishment Act of 2005, effective March 8, 2006 (D.C. Law 16-69; D.C. Official Code § 4-251.01 *et seq.*). The GCP provides a monthly stipend to eligible low-income District of Columbia residents to help raise their grandchildren, great-grandchildren, great nieces, or great nephews. Caregivers use the financial assistance to help care for child relatives residing with them.

(b) The GCP is intended to keep children out of foster care when there is a family member who is willing to care for the child but needs financial help to do so. In 2013, the program served 449 households with 685 children.

(c) The Child and Family Services Agency ("CFSA") has found that elderly caregivers receiving a subsidy have become unable to provide care for a child because of failing mental or physical health or because of death. Unless another relative is willing to care for the child, the child is vulnerable and at risk of entering foster care. If a relative is willing to care for the child but needs financial support to do so, it makes good sense to allow the GCP subsidy to be transferred to that relative. Continuing the subsidy remains true to the intent of the law, which is to keep children from being placed in foster care. Continuing the subsidy also strengthens the safety net in place for these children. In addition to the emotional benefit of keeping children within a family, the GCP subsidy is far more cost effective than foster care.

(d) This emergency legislation would allow the GCP subsidy to be transferred to another relative who is related to the child by blood, marriage, domestic partnership, or adoption or is a godparent of the child. The transfer of the GCP subsidy would help divert children from entering foster care, and would support families remaining intact. The legislation will further CFSA's efforts in building a robust service delivery system that maintains the urgency of keeping families together and children out of foster care.

ENROLLED ORIGINAL

(e) There are 685 children who could at any time be placed in the position of needing to enter foster care if an elderly grandparent caretaker becomes unable to continue caring for them. The placement of even one child in the foster care system, when the alternative of being able to continue to live with a family member is available, would certainly adversely affect the child's health, welfare, and economic well-being.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Grandparent Caregivers Program Subsidy Transfer Emergency Amendment Act of 2014 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-690

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 18, 2014

To declare the existence of an emergency with respect to the need to approve Modification Nos. 3, 4, 5, 6, 7, 8, 9, 10, and 11 to Contract No. DCKA-2010-C-0120 with Insight LLC to provide underground utility-marking services and authorize payment for the goods and services received and to be received under the contract modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modification Nos. 3, 4, 5, 6, 7, 8, 9, 10, and 11 to Contract No. DCKA-2010-C-0120 Approval and Payment Authorization Emergency Declaration Resolution of 2014".

Sec. 2. (a) There exists an immediate need to approve Modification Nos. 3, 4, 5, 6, 7, 8, 9, 10, and 11 to Contract No. DCKA-2010-C-0120 ("Contract") with Insight LLC to provide underground utility-marking services and to authorize payment for the services received and to be received under the contract modifications.

(b) On July 13, 2010, the Office of Contracting and Procurement ("OCP"), on behalf of the District Department of Transportation, awarded the Contract to Insight LLC for a base term from July 13, 2010 through July 12, 2011 in the amount of $1,098,600.00.

(c) By Modification 1(A), dated July 12, 2011, OCP exercised a partial option for option year one of the Contract for the period from July 13, 2011 through July 19, 2011 for no additional cost.

(d) By Modification 1, dated July 18, 2011, OCP exercised the remainder of option year one of the Contract for the period from July 20, 2011 through July 13, 2012 in the amount of $1,136,950.00.

(e) By Modification 3, dated July 12, 2012, OCP exercised a partial option for option year 2 of the Contract for the period from July 14, 2012 through October 13, 2012 in the amount of $293,637.50.

(f) By Modification 4, dated October 12, 2012, OCP exercised another partial option for option year 2 of the Contract for the period from October 14, 2012 through November 13, 2012 for no additional cost.

(g) By Modification 5, dated November 13, 2012, OCP exercised another partial option for option year 2 of the Contract for the period from November 14, 2012 through May 13, 2013 in the amount of $650,000.00.

(h) By Modification 6, dated May 6, 2013, OCP exercised the remainder of option year 2 of the Contract for the period from May 14, 2013 through July 13, 2013 in the amount of $230,912.50.

(i) By Modification 7, dated July 7, 2013, OCP exercised a partial option for option year 3 of the Contract for the period from July 14, 2013 through December 31, 2013 in the amount of $570,659.83.

(j) By Modification 8, dated December 31, 2013, OCP exercised another partial option for option year 3 of the Contract for the period from January 1, 2014 through January 31, 2014 for no additional cost.

(k) By Modification 9, dated January 28, 2014, OCP exercised another partial option for option year 3 of the Contract for the period from February 1, 2014 through March 31, 2014 in the amount of $202,148.75.

(l) By Modification 10, dated March 27, 2014, OCP exercised the remainder of option year 3 of the Contract for the period from April 1, 2014 through July 13, 2014 in the amount of $445,266.42.

(m) By Modification 11, dated July 10, 2014, OCP exercised option year 4 of the Contract for the period from July 14, 2014 through July 13, 2015 in the amount of $1,251,900.00.

(n) Council approval was not obtained for option years 2, 3, and 4.

(o) Emergency approval of Modification Nos.3, 4, 5, 6, 7, 8, 9, 10, and 11 for a total value of $3,644,525.00 for option years 2, 3, and 4 is necessary to allow the continuation of these vital services and to allow Insight LLC to continue performance under the Contract.. Without this approval, Insight LLC cannot be paid for critical services provided and to be provided in excess of $1 million.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification Nos. 3, 4, 5, 6, 7, 8, 9, 10, and 11 to Contract No. DCKA-2010-C-0120 Approval and Payment Authorization Emergency Act of 2014 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-691

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 18, 2014

To declare the existence of an emergency with respect to the need to create a Pepco Cost-Sharing Fund so that the District Department of Transportation can receive funds from Potomac Electric Power Company as reimbursement for cost-sharing obligations for costs associated with the District of Columbia Power Line Undergrounding, also known as DC PLUG, initiative, as authorized by Electric Company Infrastructure Improvement Financing Act of 2014.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Pepco Cost-Sharing Fund for DC PLUG Establishment Emergency Declaration Resolution of 2014".

Sec. 2. In anticipation of Potomac Electric Power Company ("Pepco") providing funds to the District Department of Transportation ("DDOT") as reimbursement for cost-sharing obligations for the District of Columbia Power Line Undergrounding ("DC PLUG") initiative, DDOT needs to have a mechanism in place to receive these funds and to spend these funds solely for any permitted purpose authorized by the Electric Company Infrastructure Improvement Financing Act of 2014. It is anticipated that Pepco and DDOT will cover the cost of DC PLUG equitably. DDOT will perform civil engineering, design and construction work, while Pepco will perform the electrical engineering, design and construction and some of the civil engineering and design work, as needed. However, because of the nature of the work involved, the costs associated with DDOT's portion of DC PLUG will outweigh Pepco's portion. In order to achieve an equitable cost-sharing arrangement between Pepco and DDOT, Pepco will reimburse DDOT for certain costs. Without the funds, which would be deposited in the Pepco Cost-Sharing Fund for DC PLUG created by this legislation, DC PLUG would be negatively impacted as the cost-sharing between Pepco and DDOT would not be balanced, and DDOT would not have the funds available to fully finance its portion of DC PLUG.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Pepco Cost-Sharing Fund for DC PLUG Establishment Emergency Act of 2014 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-692

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 18, 2014

To declare the existence of an emergency with respect to the need to approve the multiyear Pay-For-Success Intermediary Agreement with Social Finance, Inc., and Social Finance District of Columbia Teen Pregnancy Prevention and Educational Attainment 2014 Manager, Inc., to deliver Teen Outreach Program® services to selected District of Columbia schools with the goals of reducing the incidence of teen pregnancy and improving educational attainment for at-risk high-school students.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Pay-For-Success Intermediary Agreement Emergency Declaration Resolution of 2014".

Sec. 2. (a) The City Administrator for the District of Columbia proposes to enter into the multiyear Pay-For-Success Intermediary Agreement with Social Finance, Inc. ("SFI") and Social Finance District of Columbia Teen Pregnancy Prevention and Educational Attainment 2014 Manager, Inc. ("Managing Member"), in an amount not to exceed $10,588,700.00, to deliver Teen Outreach Program® services to selected District of Columbia schools with the goals of reducing the incidence of teen pregnancy and improving educational attainment for at-risk high-school students.

(b) SRI and the Managing Member will be paid based on the achievement of specific outcomes based on defined performance targets in an amount not to exceed $10,588,700.00 for the period from the date of award through December 31, 2019.

(c) Emergency approval of the Pay-For-Success Intermediary Agreement is necessary to allow the District to receive the benefit of these vital services in a timely manner from SFI and the Managing Member. .

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Pay-For-Success Intermediary Agreement Emergency Approval Resolution of 2014 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-693

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 18, 2014

To approve, on an emergency basis, the multiyear Pay-For-Success Intermediary Agreement with Social Finance, Inc., and Social Finance District of Columbia Teen Pregnancy Prevention and Educational Attainment 2014 Manager, Inc., to deliver Teen Outreach Program® services to selected District schools with the goals of reducing the incidence of teen pregnancy and improving educational attainment for at-risk high school students.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Pay-For-Success Intermediary Agreement Emergency Approval Resolution of 2014".

Sec. 2. Pursuant to section 451(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)(3)), the Council approves the Pay-For-Success Intermediary Agreement, a multiyear agreement with Social Finance, Inc., ("SFI") and Social Finance District of Columbia Teen Pregnancy Prevention and Educational Attainment 2014 Manager, Inc. ("Managing Member") to deliver Teen Outreach Program® services to selected District of Columbia schools with the goals of reducing the incidence of teen pregnancy and improving educational attainment for at-risk high-school students. SFI and the Managing Member will be paid based on the achievement of specific outcomes based on defined performance targets in an amount not to exceed $10,588,700.00. The term will be from the date of award through December 31, 2019.

Sec. 3. The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 4. The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. This resolution shall take effect immediately.

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 its introduction.

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

COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

RESOLUTIONS

PR20-1169 Reprogramming No.20-269 Disapproval Resolution of 2014

Intro. 12-11-14 by Councilmembers Alexander and Catania and Retained by the Council

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

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

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

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

Reprog. 20-286: Request to reprogram $1,700,000 of Fiscal Year 2015 Local funds budget authority within the Office of the State Superintendent of Education (OSSE) was filed in the Office of the Secretary on December 12, 2014. This reprogramming ensures that OSSE will be able to support the statewide Special Education Data System, as required by the Blackman Jones Consent Decree.

RECEIVED: 14 day review begins December 15, 2014

Reprog. 20-287: Request to reprogram $3,458,926 of Fiscal Year 2015 Local funds budget authority from the District of Columbia Public Charter Schools (DCPCS) to the Office of the State Superintendent of Education (OSSE) was filed in the Office of the Secretary on December 12, 2014. This reprogramming ensures that OSSE will be able to fund the operations of Hospitality High, formerly a Public Charter School.

RECEIVED: 14 day review begins December 15, 2014

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: December 19, 2014
Petition Date: February 2, 2015
Hearing Date: February 17, 2015
Protest Date: April 29, 2015

License No.: ABRA-097148
Licensee: Fast Good, LLC
Trade Name: Beefsteak
License Class: Retailer's Class "CR"
Address: 800 22nd St., N.W.
Contact: Kayla Brown, Agent 1-407-506-0514

WARD 2 ANC 2A SMD 2A07

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 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 1:30 pm on April 29, 2015.

NATURE OF OPERATION
Casual, fast-food restaurant with a seating capacity of 68. Total occupancy load of 102. No entertainment. No nude dancing.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Saturday 10:30 am – 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	December 19, 2014
Petition Date:	February 02, 2015
Hearing Date:	February 17, 2015
License No.:	ABRA-096458
Licensee:	La Cucina Biologica, LLC
Trade Name:	Coppi's Organic Restaurant
License Class:	Retailer's Class "C" Restaurant
Address:	3321 Connecticut Avenue, N.W.
Contact:	Carlos Amaya, 202-492-7144

WARD 3C ANC 3C SMD 3C04

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 CHANGES TO THE NATURE OF OPERATIONS:
The addition of an Entertainment Endorsement and a Change of Hours for Operations and Alcoholic Beverage Sales, Service and Consumption. 82 seats and total occupancy load of 82.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/ SERVICE/CONSUMPTION
Sunday 5 pm – 10 pm, Tuesday through Saturday 11 am – 11: 30 pm

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/ SERVICE/CONSUMPTION
Sunday through Saturday 11:30 am – 2 am

PROPOSED HOURS OF LIVE ENTERTAINMENT
Sunday through Thursday 6 pm – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: December 19, 2014
Petition Date: February 2, 2015
Hearing Date: February 17, 2015
Protest Date: April 29, 2015

License No.: ABRA-097382
Licensee: H & R, LLC
Trade Name: Exotic Hookah Lounge
License Class: Retail Class "C" Restaurant
Address: 2409 18th Street, N.W.
Contact: Jermaine Matthews – 240-838-1622

WARD 1 ANC 1C SMD 1C07

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, 2nd Floor, Suite 400 S, 2000 14th Street, NW, 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 April 29, 2015 1:30 pm.

NATURE OF OPERATION
Restaurant serving sandwiches and cold foods. DJ and Cover Charge. Total occupancy load is 75.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday10 am – 2 am, Friday and Saturday 10 am – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: December 19, 2014
Petition Date: February 2, 2015
Hearing Date: February 17, 2015
Protest Date: April 29, 2015

License No.: ABRA-097484
Licensee: Toran Investment Group, Inc.
Trade Name: Risky Ventures
License Class: Retailer's Class "CR"
Address: 1824 Columbia Road, N.W.
Contact: John Toran 202-232-4852

WARD 1 ANC 1C SMD 1C03

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 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 April 29, 2015.

NATURE OF OPERATION

Prepared food shop serving sandwiches, gourmet popcorn and potatoes chips with a seating capacity of 9 and total occupancy load of 9.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday 11 am – 2 am, Monday through Thursday 5 pm – 2am, Friday 5 pm – 2:30 am and Saturday 11 am – 2:30 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	December 19. 2014
Petition Date:	February 2, 2015
Roll Call Hearing Date:	February 17, 2015
License No.:	ABRA- 087296
Licensee:	H2, LLC
Trade Name:	Satellite Room
License Class:	Retailer's Class "C" Restaurant
Address:	2047 9th Street, N.W.
Contact:	Candace M. Fitch, 202-258-8624

WARD 1 ANC 1B SMD 1B11

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

NATURE OF SUBSTANTIAL CHANGE:
Request is for a Change of Operational Hours to a 24 hour operation, and an increase in the Summer Garden hours. 24 seats in Summer Garden. The establishment has a total occupancy load of 150.

APPROVED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR INSIDE PREMISES AND SUMMER GARDEN
Sunday 12 pm - 2 am, Monday through Thursday 5 pm - 2 am, Friday 5 pm - 3 am, and Saturday 12 pm – 3 am

PROPOSED HOURS OF OPERATION FOR INSIDE PREMISES
Sunday through Saturday 24 hours (operations only)

PROPOSED HOURS OF OPERATION FOR THE SUMMER GARDEN
Sunday through Saturday 9 am – 3 am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR INSIDE PREMISES AND THE SUMMER GARDEN
Sunday through Thursday 9 am – 2 am, Friday & Saturday 9 am – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	December 19, 2014
Petition Date:	February 2, 2015
Hearing Date:	February 17, 2015
Protest Hearing Date:	April 29, 2015

License No.:	ABRA-097182
Licensee:	Mukundrai, Inc.
Trade Name:	Southwest Flippin Pizza
License Class:	Retailer's Class "C" Restaurant
Address:	1250-1280 Maryland Avenue, S.W.
Contact:	Andrew Kline, 202-686-7600

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 April 29, 2015 at 4:30 pm.

NATURE OF OPERATION

A restaurant serving pizza, salad, calzones and chicken wings. No entertainment. No nude dancing. No nude performances. Total Occupancy Load: 99. Total number of seats: 51.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Saturday 10:30 am – 9 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	December 19, 2014
Petition Date:	February 2, 2015
Hearing Date:	February 17, 2015
Protest Date:	April 29, 2015

License No.:	ABRA-097412
Licensee:	WW 641 S Street, LLC
Trade Name:	We Work
License Class:	Retailer's Class "C" Tavern
Address:	641 S Street, N.W.
Contact:	Jeff Jackson, Agent 202-251-1566

WARD 1 ANC 1B SMD 1B01

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 1:30 pm on April 29, 2015.

NATURE OF OPERATION

Shared office space in which food and alcoholic beverages will be available to members/office space renters and guests of members. Applicant requests Entertainment Endorsement and Summer Garden. Seating for 100 inside the premises, Summer Garden with 15 seats and total occupancy load of 115.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES AND OUTSIDE IN SUMMER GARDEN

Monday through Saturday 11 am – 10 pm

HOURS OF ENTERTAINMENT INSIDE PREMISES AND OUTSIDE IN SUMMER GARDEN

Monday through Saturday 6 pm – 9 pm

DEPARTMENT OF HEALTH (DOH)
COMMUNITY HEALTH ADMINISTRATION (CHA)

Preventive Health and Health Services Block Grant (PHHSBG)
Annual Public Hearing

The D.C. Department of Health (DOH) Community Health Administration (CHA) and the Preventive Health Services Block Grant Advisory Committee are conducting a hearing to be held on Tuesday, January 13, 2015, 4:00pm – 6:30pm at 899 North Capitol Street, NE, 3rd Floor Room 306.

The public hearing is being held to assure that all citizens have the opportunity to present their views concerning funding priorities. The block grant supports programs operated by CHA and community-based organizations that address chronic disease, injury, primary care and access to healthcare.

Presentations should address a specific area of focus. Examples are asthma, youth/domestic violence, teen pregnancy, oral health, physical activity/exercise, nutrition and healthy eating.

Those who wish to present testimony are requested to provide a name, address, telephone number and organization name (when applicable) prior to the public hearing. A copy of each testimony, oral or written should be submitted electronically to sherry.billings@dc.gov by Monday, January 12th.

Testimony should reflect 1) area of focus, 2) magnitude of the health problem, and 3) proposed solutions (oral and/or written) limited to 3 pages and 3-5 minutes each. Written testimonies no longer than (3) pages and double spaced may be submitted for the record until 4:45 p.m. on Tuesday, January 13, 2014 at 899 North Capitol Street, N.E., 3rd Floor.

There will be an open forum following testimonies for participants to provide feedback to the Preventive Health Services Block Grant Advisory Committee. To register as a presenter, please contact Sherry Billings at (202) 442-9173 or sherry.billings@dc.gov and/or Valerie Brown at (202) 442-9386 or Valerie2.Brown@dc.gov. on or before Monday, January 12, by 3:30pm.

Parking is available under the building at a cost. There is limited neighborhood parking. Check WMATA http://www.wmata.com/ for other transportation options. The nearest Metro stop is Union Station.

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, MARCH 3, 2015
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.

WARD SIX

18927 ANC-6A — **Application of Nickolas Rodriguez**, pursuant to 11 DCMR § 3104.1 for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, the open court requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, to allow the construction of a two-story rear addition to an existing single-family dwelling in the R-4 District at premises 815 8th Street, N.E. (Square 911, Lot 73).

WARD FIVE

18928 ANC-5E — **Application of Jaime Zaldivar**, pursuant to 11 DCMR § 3104.1 for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, to allow the construction of a third-story rear addition to convert an existing single-family dwelling to a flat in the R-4 District at premises 115 V Street N.W. (Square 5021, Lot 8).

WARD THREE

18929 ANC-3G — **Application of Saint John's College High School**, pursuant to 11 DCMR § 3104.1, for a special exception from the private school requirements under § 206.1, to construct a new walkway and additions to an academic building in the R-1-A District at premises 2607 Military Road, N.W. (Square 2308, Lots 804-807).

WARD SIX

18930 ANC-6A — **Application of Wallis McClain**, pursuant to 11 DCMR § 3104.1 for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the open and closed court requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, to expand an existing garage and construct a two-story rear addition to an existing single-family dwelling in the R-4 District at premises 1102 Park Street, N.E. (Square 987, Lot 17).

WARD SIX

18931 ANC-6A — **Application of Carolina Lopez and Jeffrey Frank**, pursuant to 11 DCMR § 3104.1 for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the rear yard setback requirements under § 404.1, and the nonconforming structure requirements under § 2001.3, to convert an existing two-story garage into a second-story apartment and construct a covered walkway in the R-4 District at premises 721 11th Street N.E. (Square 982, Lot 39).

WARD SIX

18937 ANC-6B — **Application of Seven Brick Road, LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403.2, to allow the conversion of a church into a flat in the R-4 District at premises 1401 South Carolina Avenue, S.E. (Square 1060, Lot 100).

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 Y. HEATH, JEFFREY L. HINKLE AND A MEMBER OF THE ZONING COMMISSION, 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, February 2, 2015, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 11-07C (American University – Modification of Approved Further Processing Application)

THIS CASE IS OF INTEREST TO ANC 3D and ANC 3E

On November 20, 2014, the Office of Zoning received an application from American University (the "Applicant") requesting what it characterized as a minor modification of an approved Campus Plan Further Processing application related to the development of American University's East Campus. Minor modifications may be considered by the Zoning Commission on its Consent Calendar without a hearing pursuant to 11 DCMR 3030. At the Zoning Commission's December 8, 2014 Public Meeting, the Zoning Commission removed this application from the Consent Calendar and scheduled this application for a limited scope public hearing. Subsection 3129.9 provides that the scope of a modification hearing is limited to impact of the modification on the subject of the original application, and does not permit the Commission to revisit its original decision.

Z.C. Order No. 11-07 approved the American University Campus Plan for the period from 2011-2022 and approved a Further Processing application for the construction of six buildings on the East Campus. The East Campus is located across Nebraska Avenue, N.W. from the central campus, and is bounded by Nebraska Avenue, N.W., Massachusetts Avenue, N.W., a shared property line with the Westover Place Townhomes, and New Mexico Avenue, N.W. The Applicant is proposing a modification to the number of below-grade parking levels, by providing two rather than one level of parking - while maintaining the required 150 below-grade parking spaces, and imposing a prohibition on charter buses or motor coaches entering the East Campus property.

Consistent with 11 DCMR § 3129.8, the scope of the public hearing is limited and shall not permit the Zoning Commission to revisit its original decision.

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 Zoning 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.

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 Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code §§ 7-1141.06 and 7-1141.07 (2014 Supp.)), hereby gives notice of the adoption of a new Chapter 57, entitled "Mental Health Community Residence Facility Per Diem", of Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations ("DCMR").

The Department of Behavioral Health licenses Mental Health Community Residence Facilities pursuant to Title 22-B DCMR Chapter 38. Mental Health Community Residence Facilities ("MHCRFs") are defined as "publicly or privately owned community residence facility . . . that houses individuals eighteen (18) or older: (a) with a primary diagnosis of mental illness; and (b) who require twenty-four hour (24 hr.) on site supervision, personal assistance, lodging and meals." Title 22-B DCMR Chapter 38 enables the Department to license three levels of MHCRFs: Supported Residence MHCRFs (formerly known as Independent CRFs), which provide the necessary level of care and staffing to over 440 individuals with serious mental illness who, as a result of their mental illness, require the support of twenty-four hour a day supported housing; Supported Rehabilitative Residence MHCRFs (formerly known as contracted CRFs), which provide clinical support services in addition to the twenty-four hour care and staffing; and Intensive Residence MHCRFs, which have the capacity to provide some nursing services in addition to the other required services to assist those with medical needs as well as mental illness. The Department determines the level of care that each individual needs and authorizes admission to the appropriate level of MHCRF. These MHCRFs play a critical role in caring for residents with serious mental illness and helping them live in the least restrictive community environment. The availability of this resource is also important in providing community living arrangements for those individuals leaving nursing homes and psychiatric hospitalizations.

The Department recently completed a rate review to determine the appropriate per diem reimbursement rates for each level of MHCRFs. These per diem rates were set to ensure the MHCRF providers could provide the necessary support in accordance with the level of care determination issued by the Department, and also ensured that Department resources were appropriately utilized in order to ensure that these MHCRFs can continue to provide the necessary care without any disruption in services due to the change in rates and renewal of contracts.

This rule establishes a locally-funded per diem to be paid to all MHCRFs licensed by the Department in accordance with their level of licensure (Supported Residence, Supported Rehabilitative Resident, and Intensive Residence). To be eligible for the per diem, an MHCRF shall be required to enter into a contract with the Department. The per diem will be paid per resident and billed to the Department. The per diem is subject to availability of funds.

The first Notice of Emergency and Proposed Rulemaking, which established a per diem rate for the Supported Residence (then known as Independent) MHCRFs, was adopted and became effective on April 7, 2014, and was effective until August 5, 2014. The first rulemaking was published in the *D.C. Register* on June 6, 2014 at 61 DCR 5795. A second emergency rulemaking was adopted on September 24, 2014 and became effective on that date. It was published in the *D.C. Register* on October 24, 2104 at 61 DCR 011246. No comments have been received and no changes have been made to the rule as published on October 14, 2014.

The final rule was adopted by the Director on December 4, 2014, and will become effective upon publication in the *D.C. Register*.

Title 22-A, MENTAL HEALTH, of the DCMR is amended by adding a new Chapter 57 to read as follows:

CHAPTER 57 MENTAL HEALTH COMMUNITY RESIDENCE FACILITY PER DIEM

5700 PURPOSE

5700.1 This chapter establishes the reimbursement rates for the Mental Health Community Residence Facility (MHCRF) Per Diem for the care and support of individuals with serious mental illness residing in these facilities. Establishment of this locally-funded per diem will allow the Department of Behavioral Health (the Department) to support the MHCRF network and ensure the continued availability of this critical housing resource.

5700.2 Nothing in this chapter grants to an MHCRF operator the right to reimbursement for costs of MHCRF services. Eligibility for reimbursement for supportive services is determined solely by the contract between the Department and the MHCRF operator and is subject to the availability of appropriated funds.

5700.3 MHCRFs may only operate if licensed by the Department pursuant to Title 22-B DCMR Chapter 38. MHCRFs may be licensed as Supported Residences; Supported Rehabilitative Residences; or Intensive Residences. The type of license held by the MHCRF shall determine the per diem reimbursement as set forth below.

5700.4 Because individuals who are hearing-impaired may require additional accommodations, a separate rate is established for those Supported Rehabilitative Residence MHCRFs adapted for residents who are hearing impaired.

5701 REIMBURSEMENT RATE

5701.1 The MHCRF Per Diem rates effective October 1, 2014, are as set forth below:

SERVICE	CODE	RATE	UNIT
Supported Residence MHCRF Per Diem	SR01	$54.13	Daily
Supported Rehabilitative Residence MHCRF Per Diem	SRR01	$90.92	Daily
Supported Rehabilitative Residence MHCRF Per Diem – Hearing Impaired	SRR02	$111.43	Daily
Intensive Residence MHCRF Per Diem	IR01	$136.13	Daily

5702 ELIGIBILITY

5702.1 Only a licensed MHCRF operator who has entered into a contract with the Department will be eligible for reimbursement under this chapter. An MHCRF shall not be eligible to receive a per diem under this chapter if the MHCRF is receiving District of Columbia contract or grant funds under a separate program.

5702.2 Only a licensed Supported Rehabilitative Residence MHCRF operator who has entered into a contract for housing individuals who are hearing impaired is eligible for the SRR02 reimbursement rate.

5703 SUBMISSION OF CLAIM; PAYMENT OF INVOICE

5703.1 The licensed MHCRF operator shall submit all per diem claims under the contract, pursuant to this chapter and the terms of the contract.

5703.2 The licensed independent MHCRF operator shall submit appropriate documentation to support all claims under its contract with the Department.

5703.3 The Department will reimburse a licensed MHCRF operator for a claim that is determined by the Department to be eligible for reimbursement pursuant to the terms of the contract between the Department and the licensed MHCRF operator, subject to the availability of appropriated funds.

5703.4 No MHCRF operator shall submit claims in excess of its contract with the Department.

5704 AUDITS

5704.1 A licensed MHCRF operator shall, upon the request of the Department, cooperate in any audit or investigation concerning the MHCRF Per Diem program.

5799 DEFINITIONS

5799.1 When used in this chapter, the following terms shall have the meaning ascribed:

Mental Health Community Residence Facility (MHCRF) - a publicly or privately owned residence licensed in accordance with 22-B DCMR Chapter 38, that houses individuals, eighteen (18) or older, with a principal diagnosis of mental illness and who require twenty-four hour (24 hr.) on-site supervision, personal assistance, lodging, and meals and who are not in the custody of the District of Columbia Department of Corrections.

THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FINAL RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in Section 3(b) of the District of Columbia State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11) (2012 Repl. & 2014 Supp.)); and the Fair Student Funding and School-Based Budgeting Amendment Act of 2013, effective February 22, 2014 (D.C. Law 20-87; D.C. Official Code §§ 38-2611 and 38-2612 (2014 Supp.)) hereby gives notice of the adoption of a new Chapter 70 (Career and Technical Education Grants) of Subtitle A (Office of the State Superintendent of Education or OSSE) of Title 5 (Education) of the District of Columbia Municipal Regulations (DCMR), effective on the date of this notice in the *D.C. Register*.

The purpose of this rule is to establish regulations for the implementation of Career and Technical Education Grants to District of Columbia Public and Public Charter Schools from the Career and Technical Education Grant Program Fund, including promulgating application requirements, grant fund operations, accountability, and reporting requirements for the benefit of eligible grant recipients. The rule will allow the Office of the State Superintendent of Education to award grant funds for Local Education Agencies (LEAs) pursuing one or more of seven (7) strategies to improve career and technical education in the District, as identified in OSSE's 2012 Strategic Plan found at http://osse.dc.gov/publication/career-and-technical-education-cte-strategic-plan.

This notice has been circulated throughout the District for a thirty (30) day period since its publication in the *D.C. Register* as a proposed rule on October 31, 2014, at 61 DCR 11433, including an opportunity to submit written comments. No written comments were received, no legal challenges were entered, no changes have been requested, and none have been made from the proposed rules published on October 31, 2014, as set forth below. The rule was adopted as final on December 4, 2014 and will become effective upon publication in the *D.C. Register*.

Title 5, EDUCATION, Subtitle A, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, is amended by adding the following:

CHAPTER 70 CAREER AND TECHNICAL EDUCATION GRANTS

7000 GENERAL PROVISIONS

7000.1 This chapter establishes regulations governing the Career and Technical Education (CTE) grant program to be administered by the District of Columbia Office of the State Superintendent of Education ("OSSE") pursuant to the Fair Student Funding and School-Based Budgeting Amendment Act of 2013, effective February 22, 2014 (D.C. Law 20-87; D.C. Official Code §§ 38-2611 and 38-2612) (2014 Supp.)).

7000.2 The CTE grant program shall be funded through the CTE Grant Program Fund established by the Act, and, as required by the Act, shall consist of revenue from one or more of the following sources:

(a) Annual appropriations, if any; and

(b) Grants, gifts, or subsidies from public or private sources.

7000.3 The CTE Grant Program Fund shall be used to provide supplemental funds to DCPS and to District public charter schools to support and enhance CTE programs.

7000.4 For each competitive grant cycle, OSSE shall make available a request for funding application (RFA).

7000.5 To be eligible for a competitive grant from the CTE Grant Program Fund, an applicant must:

(a) Be a District of Columbia Local Educational Agency (LEA);

(b) Provide all assurances required in the RFA, and

(c) Meet any other requirements set forth in the RFA.

7000.6 The maximum CTE grant funding for each competitive grant cycle shall be specified in the RFA.

7000.7 OSSE may award grants from the CTE Program Fund on a non-competitive basis, based on the terms or other requirements of the funding source or as otherwise permitted by applicable law or regulations. To be eligible for a non-competitive grant, the grantee must be a District of Columbia LEA.

7000.8 OSSE shall follow the pre-award and award process set forth in 1 DCMR Chapter 50, as may be amended.

7000.9 Grants awarded through the CTE grant program shall supplement, not supplant, any Formula, federal, or other funds received by a school for career and technical education.

7001 CTE GRANT PROGRAM FUND

7001.1 Revenue in the CTE Grant Program Fund from annual appropriations shall be used to make grants under this Chapter with purposes including, but not limited to, one or more of the following:

(a) Aligning programs of study (POS) with high-demand, high-skill, and high-wage occupations;

(b) Establishing rigorous CTE program quality requirements;

(c) Increasing CTE student concentration and completion rates;

(d) Implementing a CTE transfer program;

(e) Affording LEAs flexibility in hiring, scheduling, assessing, and compensating CTE faculty;

(f) Reengaging disconnected youth and educationally disengaged youth through CTE programs; and

(g) Supporting and incentivizing CTE course offerings for adult students in alternative educational programs.

7001.2 Revenue in the CTE Grant Program Fund from public or private grants, gifts, or subsidies shall be used under the terms provided by the public or private source, conditional on OSSE approval in alignment with District CTE priorities.

7001.3 OSSE reserves the authority to define the terms of CTE Grants in the RFA for each CTE Grant competition.

7002 APPLICATION REQUIREMENTS

7002.1 Only a designated official of an LEA may submit a grant application on behalf of an applicant school.

7002.2 All required documentation specified in the RFA shall be included with the application. An incomplete application shall be disqualified and will not be reviewed.

7003 GRANT AWARD NOTIFICATION

7003.1 OSSE shall prepare and issue a grant award notification to each LEA for which an application has been approved or for which a sole-source award has been made. The grant award notification shall:

(a) Incorporate the terms of the RFA by reference, where applicable;

(b) State the amount of the grant; and

(c) Indicate the period during which the grantee may obligate grant funds.

7004 ACCOUNTABILITY AND REPORTING REQUIREMENTS

7004.1 A CTE Grant recipient shall submit periodical written reports during the grant period and a final written report after the end of the grant award period. The reporting frequency and the content of the reports will be described in the RFA or the grant award notification.

7004.2 A CTE Grant recipient shall:

(a) Submit a written request and obtain written approval from OSSE before expending CTE Grant funds for a purpose that was not included in the original approved budget;

(b) Submit a written request and a modified budget for any proposed spending modification;

(c) Maintain accurate and complete records of all activities supported by the grant for three (3) years after the end of the grant period or as otherwise specified;

(d) Maintain records that document initial and periodic assessments, initial and periodic plans, and the ongoing progress of program activities; and

(e) Ensure confidentiality and prevent unauthorized access to records. Programs shall maintain all records, including required reports, documents and files on-site, in a properly secured cabinet or location. Records shall be accessed by authorized personnel only.

7004.3 OSSE may monitor a CTE Grant recipient during the grant period. OSSE's monitoring may include scheduled and unscheduled visits to the CTE Grant recipient's facility or principal place of business.

7004.4 A CTE Grant recipient shall fully cooperate with authorized representatives of the Government of the District of Columbia, including OSSE, and shall provide them access to facilities, staff, records, and other information related to the grant upon request, to the extent allowed by applicable law.

7005 TERMINATION OR REMEDIAL PROCEDURES

7005.1 If a grantee fails to comply with the terms of the grant award or applicable federal or District of Columbia laws or regulations, OSSE may, after giving reasonable written notice to the grantee, terminate the grant in whole or in part and/or, in its discretion, require the grantee to take remedial action to ensure compliance. In the absence of extenuating circumstances, reasonable notice shall be no less than thirty (30) calendar days.

7005.2 OSSE shall provide to grantee written notice of termination and, if applicable, required remedial action. The notice shall state with specificity the reasons for the termination or required remedial action, the specific remedial action required of the grantee, and the effective date of the termination or implementation of the remedial action.

7005.3 OSSE may in its discretion make the termination effective in less than thirty (30) days, if a delayed effective date would be unreasonable under the circumstances, taking into consideration the responsibility to protect the District government's interest.

7005.4 A grant that has been terminated may be reinstated if the grantee has taken all required corrective action satisfactory to OSSE by the effective date provided in the written notice of termination, or given satisfactory evidence that all required corrective action will be taken.

7005.5 A grantee may request review of a decision by OSSE to terminate the grant or to require remedial action. A request for review must be submitted in writing to OSSE at any time before the effective date of the termination or required remedial action, or within thirty (30) calendar days of the date the grantee received notice of termination, whichever is longer. The written request for review shall include the following:

(a) A concise statement of facts regarding each specified reason for the termination or required remedial action;

(b) The specific basis for contesting each reason;

(c) The specific relief requested; and

(d) Two (2) copies of all documentary evidence supporting the grantee's positions.

7005.6 Review of the grantee's request shall be performed by an OSSE employee selected by the State Superintendent of Education and such person shall not have participated in the award of the grant or the decision to terminate the grant. The decision of the reviewer shall be final.

7099 DEFINITIONS

"Budget" means the financial plan for the project or program approved by OSSE during the award period. The budget may include funding for the project or program other than funds awarded from the CTE Grant Program Fund, as determined by OSSE.

"Career and Technical Education (CTE)" means education that prepares students for a wide range of careers and further educational opportunities. These careers may require varying levels of education—including industry-recognized credentials, postsecondary certificates, and two- and four-year degrees. CTE equips students with core academic skills, employability skills, and job-specific, technical skills related to a specific career pathway.

"Completion rate" means the percentage of CTE Concentrators who, within four (4) years, have completed a three (3) or four (4) course sequence program of study. A CTE Concentrator is a student who has completed two (2) courses of a three-sequence program of study, or three (3) courses of a four-sequence program of study.

"Concentration rate" means the percentage of CTE Participants who have completed two courses (2) of a three-sequence program of study, or three (3) courses of a four-sequence program of study. A CTE Participant is a student who has completed the first (1^{st}) course, and enrolled in the second (2^{nd}) course of a three or four-sequence program of study.

"CTE transfer program" means a program or partnership across LEAs and/or within multi-campus LEAs that enables students to complete CTE coursework on school campuses other than their own without requiring a change in their full-time enrollment.

"Disconnected youth" means DC residents aged sixteen to twenty-four (16-24) years who are living below two hundred (200%) percent of the federal poverty threshold and who are not in school and not working.

"Educationally disengaged youth" means DC residents aged sixteen to twenty-four (16-24) years who are not enrolled in an educational program and who do not have a high school diploma or its equivalent.

"High-demand occupations" means occupations with a projected ten-year (10) growth rate above that of all occupations AND having at least fifty (50) or more total annual openings (growth and replacement) in the District of Columbia.

"High-skill occupations" means occupations with education or training requirements of: long-term on-the-job training lasting one (1) or more years; work experience in a related occupation; industry recognized certification or credential; postsecondary career and technical training; associate's degree; bachelor's degree; master's degree; doctoral degree; or first professional degree.

"High-wage occupations" means occupations that pay or lead to positions paying at least the median hourly wage or the median annual wage for all occupations in the District of Columbia.

"OSSE" means the Office of the State Superintendent of Education for the District of Columbia.

"Local Educational Agency" or **"LEA"** means a public agency having administrative control and direction of a public elementary or secondary school in the District of Columbia. The terms include the District of Columbia Public Schools (DCPS) and District of Columbia public charter schools.

"Program of study" means a sequence of instruction (based on recommended standards and knowledge and skills) consisting of coursework, co-curricular activities, work-site learning, service learning and other learning experiences. This sequence of instruction provides preparation for a career.

"Subsidy" means monetary resources designated to supplement a project or program or to effect a reduction in the regular cost of goods or services for a project or program.

"Termination" means the end of the award, in whole or in part, at any time prior to the planned end of the period of the award.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 4 of the Immunization of School Students Act of 1979, effective September 28, 1979 (D.C. Law 3-20; D.C. Official Code § 38-503 (2012 Repl.)), Mayor's Order 2006-117, dated September 5, 2006, § 1 of An Act to authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939 (53 Stat. 1408, ch. 601, § 1; D.C. Official Code § 7-131 (2012 Repl.)), and § 2 of Mayor's Order 98-141, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 1 (Protection of Public Health) of Title 22 (Health), Subtitle B (Public Health and Medicine), of the District of Columbia Municipal Regulations (DCMR).

These rules will clarify that religious exemptions and HPV opt-outs must be filed for each year they are claimed. The rule will also expand HPV immunization to include boys and all children from grade six (6) through grade twelve (12). Presently, only children through age 16 are required to be immunized.

A Notice of Emergency and Proposed Rulemaking was published October 31, 2014 at 61 DCR 11517. No comments were received in connection with publication of the Notice of Emergency and Proposed Rules, and no changes have been made since that publication. The Director took final rulemaking action to adopt the rules on December 10, 2014.

The rules shall become effective on publication of this Notice of Final Rulemaking in the *D.C. Register*.

Amend Chapter 1, PROTECTION OF PUBLIC HEALTH, of Title 22-B, PUBLIC HEALTH AND MEDICINE, of the DCMR as follows:

Section 129, IMMUNIZATION: REPORTS AND GENERAL PROVISIONS, is amended by adding a new Subsection 129.8 to read as follows:

129.8 A person claiming religious exemption from immunization for a child shall file the form at the beginning of each school year for each child for which the exemption is claimed. A person electing to opt-out of immunization with the HPV vaccination for a child shall file the form at the beginning of each school year for each child for which there is an opt-out to be filed.

Section 146, HUMAN PAPILLOMAVIRUS (HPV), Subsection 146.1, is amended to read as follows:

146.1 Beginning with the 2014/2015 school year, a student enrolling in grade six (6) shall receive the first dose of HPV vaccine at age eleven (11). Students enrolling in grades seven (7) through twelve (12) who have not previously been

immunized for HPV shall receive the vaccine before enrollment or provide an opt-out form, as provided in § 146.4.

Subsection 146.4 is amended to read as follows:

146.4 The parent or legal guardian of a student required to receive a vaccine under this section may opt out of the vaccination for any reason by signing a form provided by the Department that states that the parent or legal guardian has been informed of the HPV vaccination requirement and has elected not to participate. A student eighteen (18) years of age or older may opt out on his or her own behalf by signing a form provided by the Department that states that the student has been informed of the HPV vaccination requirement and has elected not to participate.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF FINAL RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA), pursuant to the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-203 (2012 Repl.)), hereby gives adoption of the amended Chapter 62 (Rent Calculations) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rulemaking is to amend rent calculations and to authorize payment of association fees.

The proposed rulemaking was published in the *D.C. Register* on October 17, 2014, at 61 DCR 010823. This rulemaking was adopted as final at the Board of Commissioners' regular meeting on December 10, 2014. The final rules will become effective upon publication of this notice in the *D.C. Register*.

The additional provisions of Chapter 62, RENT CALCULATIONS, of Title 14, HOUSING, of the DCMR are proposed as follows:

Section 6200 is amended to read as follows:

6200 RENT CALCULATIONS

6200.1 Notwithstanding provisions which may appear elsewhere in this subtitle, each tenant shall pay, as tenant rent, one of the following:

(a) Income-based rent as the greater of one twelfth (1/12) of thirty percent (30%) of adjusted income or one twelfth (1/12) of ten percent (10%) of the annual income. The value of any assets or imputed income from assets shall not be used in the calculation of income based rent. Actual net income from assets greater than the threshold described above shall be included in the determination of adjusted income;

(b) Market-based rent which shall not be lower than 80% of the applicable United States Department of Housing and Urban Development (HUD) Fair Market Rent (FMR) for applicable Metropolitan Statistical Area. If the Market-based rent is less than income-based rent, as determined by DCHA, the family shall pay the lower;

(1) Pursuant to HUDs PIH Notice 2014-12 implementing Sections 210 and 243 of Title II of Pub.L. 113-76, the Consolidation Appropriations Act of 2014, if the application of the flat rent rule increases a family's existing rent by more than 35%, then the market-based rent amount shall be phased in as necessary to ensure

that the family's existing rental payment does not increase by more than 35% biennially.

(c) If the family is determined by DCHA to have no adjusted income, the family shall pay minimum rent as provided in § 6210.

6200.2 Any changes in tenant rent shall be stated in a special supplement to the lease, which shall, upon issuance, become a part of the dwelling lease. The special supplement to the lease shall constitute the tenants thirty (30) day written notice of an increase in tenant rent. The family shall be provided a copy of the special supplement to the lease.

6200.3 A copy of the market-based rent schedule for a property shall be available at each property management office, on the DCHA web site, or can be requested from the DCHA.

6200.4 At initial lease-up and with each recertification or interim recertification, DCHA shall calculate the family's income-based rent. If the market-based rent, as listed in the current market-based rent schedule for the property, is less than the family's income-based rent, the family shall pay the lower amount.

6200.5 If a tenant is paying a market-based rent, the tenant shall:

(a) Submit an interim recertification in accordance with § 6117 for any change in family circumstances. Change in family circumstances may include, but shall not be limited to, reductions in income, employment, or other assistance; or increases in expenses for medical costs, child care, transportation, or education pursuant to§ 6119; and

(b) Provide DCHA with a completed application for continued occupancy, in accordance with § 6118.

6200.6 All changes in tenant rent, both income-based and market-based and whether after an interim or regular recertification, shall be implemented in accordance with §§ 6118, 6119, and this chapter.

6200.7 In properties where utilities and other essential services are supplied to the tenant by DCHA, tenant rent payable to DCHA under the dwelling lease shall be the same as total tenant payment.

6200.8 Tenant rent shall be computed after both annual income and adjusted income have been verified.

6200.9 The tenant shall receive retroactive credit to credit an administrative error.

6200.10 Tenants occupying property for a portion of a month at the time of move-in shall be charged a pro-rata share of the full monthly rate determined by DCHA.

6200.11 Allowances and special deductions:

(a) In properties where tenants are responsible for paying for their own utility bills, the utility allowance shall be subtracted from the total tenant payment to determine the tenant rent payable to DCHA. If the tenant rent resulting from the subtraction of the utility allowance from the total payment is negative, DCHA shall send a monthly check in the amount of the difference to the tenant.

(b) At Redeveloped Properties or Service Rich Properties, as defined in 14 DCMR Section 6113, which an Association Fee is assessed, residents at such properties may be required to pay an amount calculated to equal the Association Fee attributable to the unit and shall be granted an allowance reflecting the Association Fee payment. The allowance shall be subtracted from the tenant rent to determine the tenant payment as follows:

(1) Any utility allowance shall be deducted from the tenant rent first. The allowance for the Association Fee shall be deducted from any remaining positive amount. If the deduction of the utility allowance results in a negative rent there shall be no charge for an Association Fee and no deduction for the Association Fee allowance. If the deduction of the Association Fee allowance results in a negative amount, the required Association Fee payment from the tenant and its associated allowance shall be reduced so that the tenant rent is zero.

(2) If the tenant fails to pay the Association Fee on time, the fee shall be converted to rent, not to exceed 30% of adjusted income, when added to the monthly rent, for the month in which the fee was paid.

(3) If the Association Fee is paid after entry of judgment as part of the payment required to avoid eviction, the fee shall be recorded as the Association Fee, and the ledger shall be updated to reflect the tenant’s payments.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority under Section 18a(a) of An Act to establish standard weights and measures for the District of Columbia, to define the duties of the Superintendent of Weights, Measures, and Markets of the District of Columbia, and for other purposes, effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code § 37-201.18a(a) (2014 Supp.)), and Reorganization Plan No. 1 of 1983, effective March 31, 1983, hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, a new Chapter 17 (Octane Fuel Measurements), and amend Chapter 33 (Department of Consumer and Regulatory Affairs (DCRA) Infractions), of Title 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR).

This proposed rulemaking would establish criteria and protocols for octane testing in motor fuels. Minimum readings, along with margin-of-error tolerance levels are set. The processes and equipment used for the collection and measurement of octane in motor fuels are set forth as well.

A new Chapter 17 (OCTANE FUEL MEASUREMENTS) is added to Title 16 (CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS) of the DCMR to read as follows:

CHAPTER 17 OCTANE FUEL MEASUREMENTS

1700 ANNUAL INSPECTION OF OCTANE LEVELS

1700.1 DCRA shall inspect and test, at least every six (6) months, every location where automotive fuel is offered for sale or use in the District of Columbia.

1700.2 Octane readings where automotive fuel is offered for sale or used shall meet the following minimum standards:

(a) Octane rating 87 shall measure at 86.5 or higher;

(b) Octane rating 89 shall measure at 88.5 or higher;

(c) Octane rating 93 shall measure at 92.5 or higher;

(d) Octane rating 94 shall measure at 93.5 or higher.

1700.3 The DCRA Inspector shall have the following equipment to obtain a fuel sample:

(a) Neoprene gloves;

(b) A facial mask;

(c) A liter-size cylindrical aluminum container with a self-locking cap;

(d) A ZX-101XL Portable Octane Analyzers or equivalent device approved by the National Institute of Weights and Measures;

(e) A ZX-101XL portable octane analyzer sample holder jar or equivalent device approved by the National Institute of Weights and Measures; and

(f) Safety cones;

(g) Metal gas container; and

(h) Metal funnel.

1701 FUEL SAMPLE TEST

1701.1 DCRA shall obtain the condensation level and existing quantity of automotive fuel from the Veeder-Root or equivalent prior to testing.

1701.2 The following process shall be followed for each octane rating tested:

(a) Confirm that the DCRA Weight and Measure Certificate is conspicuously posted;

(b) Place safety cones around the gas pump to block off work area;

(c) Fill the liter-size aluminum cylindrical container with the desired octane;

(d) Write the octane grade on the liter-size aluminum cylindrical container;

(e) Transfer the octane to the portable octane analyzer sample-holder jar;

(f) Tare the portable octane analyzer;

(g) Place the portable octane analyzer sample-holder jar in the ZX-101XL Portable Octane Analyzers for measurement;

(h) Measure the octane sample and retain the results from the Portable Octane Analyzer; and

(i) Return extracted gasoline that will not be used for testing to the proper underground tank.

1701.3 In cases where the octane rating measures within the permitted tolerance, the DCRA Inspector shall continue to inspect the remaining octane ratings at the fueling station.

1701.4 In cases where a blended service station dispenser has a single nozzle, the DCRA Inspector shall extract one (1) gallon of gas of the octane to be tested and stored in the metal gas container before filling the liter-size aluminum cylindrical container for testing. This shall be repeated for each octane grade.

1702 SECOND FUEL-SAMPLE TEST

1702.1 A DCRA Inspector who samples an octane rating that measures below the 0.5 tolerance set forth in § 1700.2 shall:

(a) Take a sample from the underground storage tank of whichever octane rating is below the 0.5 tolerance;

(b) Fill the liter-size aluminum cylindrical container with the desired octane rating;

(c) Transfer the octane to the portable octane analyzer sample holder jar;

(d) Place the portable octane analyzer sample holder jar in the ZX-101XL Portable Octane Analyzers for measurement;

(e) Measure and confirm that the octane rating measures are below the 0.5 tolerance;

(f) Retain the results from the Portable Octane Analyzer; and

(g) Send the sample from the underground storage tank to the Motor Fuel Testing Lab of the Comptroller of Maryland or equivalent.

1703 ANALYSIS OF FUEL SAMPLE BY A THIRD PARTY

1703.1 The sample from the underground storage tank that measures below the 0.5 tolerance shall be sent to the Motor Fuel Testing Labof the Comptroller of Maryland in Maryland or equivalent within twenty-four (24) hours of collection.

1703.2 Following confirmation from the Motor Fuel Testing Lab or equivalent that the octane rating sample from the underground storage tank measures below the 0.5 tolerance, the DCRA Inspector shall return to the location where the sample was retrieved within twenty-four (24) hours or the next business day and repeat §1701 to re-confirm that the octane rating measures below the 0.5 tolerance.

1703.2 The service station dispenser nozzle where the fuel was retrieved shall be condemned upon re-confirmation that the octane rating measures below the 0.5 tolerance.

1704 CONDEMNATION OF A DISPENSING SYSTEM, STORAGE TANK, OR OTHER DISPENSING DEVICE

1704.1 DCRA shall:

(a) Affix a condemned tag and/or boot and place a wire seal over the service station dispenser nozzle that has dispensed fuelwith an octane rating that fails the re-confirmation reading in § 1703.2; and

(b) The condemnation tag and/or boot shall state that it is unlawful to remove, break, mutilate, or destroy any notice, seal, or order issued by DCRA.

1704.2 In cases where an octane rating at a blendedservice station dispenseris condemned, the entire service station dispenser is condemned and no automotive fuel shall be dispensed from that service station dispenser.

1704.3 The condemnation tag and/or boot shall not be removed until DCRA has re-inspected the service station dispenser and determined it to be in compliance.

1705 RECORD KEEPING

1705.1 For each condemnation issued, DCRA shall maintain a record consisting of:

(a) Description of the device DCRA used to retrieve the gas sample from the service station dispenser;

(b) Results from the device showing a violation of § 1700.2;

(c) Name and address of the owner; and

(d) Date of inspection(s).

1705.2 DCRA shall retain the record for three (3) years from the date of inspection.

1706 FUEL COLOR CODE CHARTS

1706.1 Each automotive fueling station shall have a color-coded chart that clearly identifies which color represents each octane rating.The colors used shall comply with the current version of American Petroleum Institute (API) Recommended Practice 1637, “Using the API Color-Symbol System to Mark Equipment and

Vehicles for Product Identification at Service Stations and Distribution Terminals."

1706.2 The color-coded chart shall be conspicuously posted in or upon the premises so that it may be readily seen by the DCRA inspector, DCRA investigator, or person(s) delivering fuel without requiring the person(s) to enter the premises.

1706.3 The fill pipe and/or access cover for each underground fuel-storage tank shall be painted to match the color-coded chart.

1707 FUEL LABELING

1707.1 Fuel label layout shall be 3 inches (7.62 cm) wide × 2 1/2 inches (6.35 cm) long. "Franklin Gothic" or equivalent type is used for the octane rating number on octane labels. All type is centered. All text and numerals are centered within the interior borders.

1707.2 Fuel label type size and setting shall be Helvetica or equivalent type with the exception of the octane rating number. Helvetica is available in a variety of phototype setting systems, by linotype, and in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The line "Minimum Octane Rating" is set in 12-point Helvetica Bold, all capitals, with letterspace set at 12 1/2 point. The line "(R M)/2 METHOD" is set in 10-point Helvetica Bold, all capitals, with letterspace set at 10 1/2 points. The octane number is set in 96-point Franklin Gothic Condensed with 1/8 inch (.32 cm) space between the numbers.

1707.3 The basic color on all octane labels is process yellow. All type is process black. All borders are process black. All colors must be non-fade.

1707.4 This section adopts and incorporates by reference 16 C.F.R. Part 306.12 "Automotive Fuel Ratings, Certification and Posting-Labels" and subsequent changes.

1799 DEFINITIONS

Blended Service Station Dispenser - a pump that has a single nozzle that dispenses more than one octane rating.

Motor Fuel Testing Lab - a lab that analyzes incoming petroleum products for their quality and to ensure that samples of various grades of motor fuels sold in the state comply with state and federal EPA guidelines.

Service Station Dispenser - a pump that draws gasoline from underground storage tanks.

Tolerance - a value fixing the limit of allowable error or departure from true performance or value.

All persons desiring to comment on these proposed regulations should submit written comments in to Matt Orlins, Legislative Affairs Officer, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, S.W., Room 5164, Washington, D.C. 20024, or by e-mail to matt.orlins@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar ($1.00) will be charged for each copy of the proposed rules requested. Free copies are available on the DCRA website at http://dcra.dc.gov by going to the "About DCRA"tab, clicking "News Room", and clicking on "Rulemaking".

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF SECOND PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in Sections 3(b)(7) and (11) of the State Education Office Establishment Act of 2000, as amended, effective October 21, 2000 (D.C. Law 13-176, D.C. Official Code §§ 38-2602(b)(7) and (11) (2012 Repl.)); Section 403 of the Public Education Reform Amendment Act of 2007, as amended, effective June 12, 2007 (D.C. Law 17-9, D.C. Official Code § 38-2652(a)(3) (2012 Repl.)); Articles I and II of An Act to provide for compulsory school attendance, for the taking of school census in the District of Columbia, and for other purposes, as amended, approved February 4, 1925 (43 Stat. 806; D.C. Official Code §§ 38-201 *et seq*. (2012 Repl.)); and Section 402 of the Healthy Schools Act of 2010, as amended, effective July 27, 2010 (D.C. Law 18-209; D.C. Official Code § 38-824.02(c) (2012 Repl.)); hereby gives notice of his intent to adopt, in not less than thirty (30) days after the publication of this notice in the *D.C. Register*, amendments to Title 5 (Education), Subtitle E (Original Title 5), Chapter 22 (Grades, Promotion, and Graduation), and to add a new Chapter 22 (Graduation) to Title 5 (Education), Subtitle A (Office of the State Superintendent of Education), of the District of Columbia Municipal Regulations (DCMR).

The amended rules govern methods to obtain credits toward graduation from a District of Columbia school, and the new rules govern the issuance of state-level high school diplomas.

The Office of the State Superintendent of Education (OSSE), pursuant to D.C. Official Code § 38-2602(b)(7) (2012 Repl.), is responsible for establishing the minimum credits that must be achieved in order to graduate from any public and public charter school, with the advice and approval of the State Board of Education (SBOE), pursuant to §§ 38-2652(a)(3) and (4). In developing the regulations, OSSE and SBOE engaged in an extensive period of public engagement and solicitation of public comments.

The purposes of this new Chapter 22 (Graduation) within Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) of the DCMR are to (1) ensure that all students graduate with the knowledge, skills, and work habits that will prepare them for postsecondary education and modern careers; (2) encourage, support, and expand the creativity of local education agencies as they develop high-quality educational experiences that are an integral part of secondary education in the evolving 21st Century classroom; and (3) allow students multiple, equally rigorous and valued ways to demonstrate competency of the knowledge and skills necessary for postsecondary education and meaningful careers.

These proposed rules build on amendments of the existing rules of graduation set forth in Title 5-E (Original Title 5) DCMR Chapter 22 (Grades, Promotion, and Graduation) to replace the existing term ‘Carnegie Units’ with the term ‘credit’, and then implement, in the new Title 5-A DCMR Chapter 22 provision, multiple methods for educational institutions to award students credit toward graduation requirements. At the same time, OSSE has maintained the elements of Title 5-E DCMR Section 2201 to avoid unnecessary shifts and inconsistency, transposed fundamental provisions in Sections 5-E DCMR Sections 2202, 2203 and 2206 to 5-A DCMR Sections 2200 through 2204, and deleted Title 5-E DCMR Sections 2202 through 2208.

The proposed rules will also establish a State High School diploma that will be provided to the District's nontraditional students such as adult students, students attending alternative schools, and the District's home-schooled students who have demonstrated competency through alternative graduation requirements. The State High School diploma will also be provided to students attending a state-run overseen school.

On November 28, 2014, OSSE published Notice of Proposed Rulemaking in the *D.C. Register* at 61 DCR 12291. After receiving formal and informal public comment from many of the major stakeholders, OSSE has stricken sections of the First Proposed Rulemaking that have caused inadvertent confusion. OSSE has also deleted words to clarify areas of the First Proposed Rulemaking. This Notice of Second Proposed Rulemaking hereby supersedes the first Notice of Proposed Rulemaking.

This notice therefore proposes: (1) amendment of Section 2201 of Title 5-EDCMR to amend and replace the term 'Carnegie Unit' with the term 'credit'; (2) amendment of Title 5-A by adding a new Chapter 22, to implement multiple methods of earning credit toward graduation; and (3) amendment of Title 5-E to delete Sections 2202 (Graduation: General Policy), 2203 (Graduation: Academic Requirements), 2204 (Graduation Status of Students), 2205 (Official List of Graduates), 2206 (Diplomas and Graduation Exercises), 2207 (Class Fees), and 2208 (Class Gifts). In view of the twenty (days) since publication of these proposed amendments in a fuller form and wider scope, this more narrow notice containing otherwise substantially the same language, with the exception of a few clarifying additions, in the remaining sections is being circulated throughout the District for a shortened ten (10) day period, including an opportunity to submit written comments on these proposals, as is set forth in detail below.

Amend Title 5, EDUCATION, Subtitle E, ORIGINAL TITLE 5, Chapter 22, GRADES, PROMOTION, AND GRADUATION, Section 2201, PROMOTION, to read as follows:

2201 PROMOTION

2201.1 Promotion shall be defined as the movement of students to higher grade levels or/course levels and to graduation from high school in accordance with D.C. School Board Policy.

2201.2 Promotions shall be made at the end of the school year. Special promotions may be made at any time with the documented assessment conducted and certified by the Chief Academic Officer and the written approval of the Regional Superintendent whose jurisdiction encompasses the school that the student attends.

2201.3 Students with disabilities, identified through the Individuals with Disabilities in Education Act (IDEA) 2004, are eligible for promotion as determined in accordance with the goals and objectives, accommodations and modifications as it relates to the content standards developed and agreed upon by the IEP Team. For English Language Learners, any decision on retention must be made in

conjunction with the bilingual/ English Second Learner (ESL) teacher (*cf.*, 5-E DCMR Chapter 31 (Education of Language Minority Students)).

2201.4 A student may be retained in any grade, with the following requirements:

(a) A student cannot be retained more than once during his enrollment in the District of Columbia Public Schools unless there is a comprehensive review by multiple school personnel and approval from the Regional Superintendent whose jurisdiction encompasses the school the student attends; and

(b) If a student does not meet all requirements for promotion, but moves on to middle or high school because s/he has been previously retained, the principal must submit a report to the receiving school detailing all unmet requirements. This report must be received by June 30 and updated at the close of summer school. For students who move prior to the end of the school year, the report must be provided to the receiving school within thirty (30) calendar days of the student's enrollment in the school. Students in this situation will be enrolled in support services in the receiving school.

2201.5 [REPEALED].

2201.6 Promotion of students in pre-kindergarten through eighth (8th) grade to the next level shall include consideration of the following criteria. Students shall receive:

(a) Proficient or advanced marks in the core subjects of:

(1) Reading/language arts;

(2) Mathematics;

(3) Science; and

(4) Social studies.

(b) Achievement of the goals of the intervention learning plan where applicable;

(c) Meet the requirements of the system's attendance policy;

(d) If a student in pre-kindergarten or kindergarten has met the proficiency requirements in the core subject areas but is not functioning at a skill level deemed ready for promotion to kindergarten or first grade by a teacher or a parent in the areas of physical, social or emotional development, the

option of repeating a pre-kindergarten or kindergarten may be considered without being regarded as a retention.

2201.7 [REPEALED].

2201.8 Students may complete the high school graduation requirements over a three (3), four (4), or five (5) year period, depending upon the time and support they need to complete graduation requirements as stated in their individualized graduation plan signed and verified by the counselor. The following guidelines shall apply for testing purposes where a grade definition is required:

(a) Any student who earns six (6) credits by completing content standards of the required courses including units in ninth (9th) grade English and Algebra I, shall be eligible to be classified as a tenth (10th) grade student.

(b) Any student who earns twelve (12) credits by completing content standards of the required courses including tenth (10th) grade English, shall be eligible to be classified as an eleventh (11th) grade student.

(c) Any student who earns eighteen (18) credits by completing content standards of the required courses including eleventh (11th) grade English, shall be eligible to be classified as a twelfth (12th) grade student.

Amend Title 5, EDUCATION, Subtitle E, ORIGINAL TITLE 5, Chapter 22, GRADES, PROMOTION, AND GRADUATION, by reorganizing Sections 2202, GRADUATION: GENERAL POLICY and 2203, GRADUATION: ACADEMIC REQUIREMENTS to Title 5, EDUCATION, Subtitle A, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, and deleting Sections 2204, GRADUATION STATUS OF STUDENTS, 2205, OFFICIAL LIST OF GRADUATES, 2206, DIPLOMAS AND GRADUATION EXERCISES, 2207, CLASS FEES, and 2208, CLASS GIFTS.

Amend Title 5, EDUCATION, Subtitle A, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, by adding Chapter 22, GRADUATION, to read as follows:

CHAPTER 22 GRADUATION

2200 AUTHORITY AND PURPOSE

2200.1 The following rules are issued pursuant to authority set forth in Sections 7 and 11 of the State Education Office Establishment Act of 2000, as amended, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b)(7) and (11) (2012 Repl.)); Section 403 of the Public Education Reform Amendment Act of 2007, as amended, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-2652(a)(3) (2012 Repl.)); Articles I and II of An Act to provide for compulsory school attendance, for the taking of school census in the District of Columbia, and for other purposes, as amended, approved February 4, 1925 (43

Stat. 806; D.C. Official Code §§ 38-201 *et seq*. (2012 Repl.)); and Section 402 of the Healthy Schools Act of 2010, as amended, effective July 27, 2010 (D.C. Law 18-209; D.C. Official Code § 38-824.02(c) (2012 Repl.)).

2200.2 The purpose of this chapter is to establish the requirements governing acceptable credits to be granted for studies leading to graduation and issuance of a diploma in District of Columbia educational institutions offering high school instruction, including District of Columbia Public Schools, public charter schools, and state-overseen schools. Further, this chapter establishes the requirements governing acceptable credits to be granted for studies leading to graduation and issuance of a diploma by the State Superintendent of Education.

2201 GENERAL POLICY

2201.1 This chapter shall apply to an educational institution as defined in this chapter.

2201.2 This chapter shall also apply to a nonpublic educational institution, as defined in this chapter, that provides educational services to special education students pursuant to Section 3 of the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.03 (2012 Repl.)) and consistent with Title 5-A DCMR §§ 2800 *et seq.*

2201.3 At the beginning of each school year, educational institutions shall notify parents and guardians of enrolled students of the educational institution's graduation policies and procedures and any course credit flexibility options an educational institution will provide to students, in accordance with this chapter.

2201.4 Educational institutions shall have the flexibility to design and implement their own curricula and instructional methods so long as curricula meet and exceed state approved standards.

2201. 5 For students who transfer to the District from another state, country, school, program, or home-schooling situation, the educational institution shall evaluate the value of the student's prior educational experiences and determine to what degree the student has met the school's graduation requirements. The course work credits received by the student prior to transfer into an educational institution may be used to meet the graduation requirement set forth in §§ 2202 *et. seq.* upon the educational institution's verification of successful completion of this comparable course work. After enrolling in the educational institution, these students will need to satisfy all assessment, proficiency, and graduation requirements in the appropriate subject areas, as determined by the educational institution.

2202 GRADUATION: ACADEMIC REQUIREMENTS

2202.1 **Subject Area Course Requirements**

Beginning with the graduating class of 2016, in School Year 2015-2016, and every graduating class thereafter, each high school student shall complete the following coursework:

A total of twenty-four (24) credits in corresponding subjects and required volunteer community service hours shall have been satisfactorily completed for graduation.

(a) The following credits in the following subjects shall be required:

COURSES	**CREDITS(S)**
English	4.0
Mathematics; must include Algebra 1, Geometry, and Algebra II at a minimum	4.0
Science; must include three (3) lab sciences	4.0
Social Studies; must include World History 1 and 2, United States History; United States Government, and District of Columbia History	4.0
World Language	2.0
Art	0.5
Music	0.5
Physical Education/Health	1.5
Electives	3.5
Total	**24.0**

(b) At least two (2) of the twenty four (24) credits for graduation shall include a College Level or Career Preparatory (CLCP) course approved by the educational institution and successfully completed by the student. The course may fulfill subject matter or elective unit requirements as deemed appropriate by the educational institution. CLCP courses approved by the educational institution may include courses at other institutions.

(c) All students shall enroll in Algebra no later than ninth (9^{th}) grade commencing with the 2007-2008 School Year.

(d) For all students entering the ninth (9^{th}) grade beginning School Year 2009-2010, one (1) of the three (3) lab science units, required by paragraph (a) of this subsection, shall be a course in Biology.

(e) In addition to the twenty-four (24) credits, one hundred (100) hours of volunteer community service shall be satisfactorily completed. The specific volunteer community service projects shall be established by the educational institution.

(f) One and one half (1.5) credits in health and physical education shall not be required for the evening program high school diploma.

2202.2 **Course Credit Flexibility**

(a) Beginning with the School Year 2015-2016, an educational institution shall award course credit toward high school graduation, on the condition that the course activities incorporate all applicable state content standards, through the any of the following methods:

(1) Seat-time: An educational institution may award one credit toward high school graduation for a course that requires a minimum of one hundred-twenty (120) hours of instruction or one hundred-fifty (150) hours of laboratory instruction. An educational institution may award one-half unit (1/2) of credit toward high school graduation for a course of sixty (60) hours of instruction and one-fourth (1/4) unit of credit toward high school graduation for a course requiring a minimum of thirty (30) hours of instruction; or

(2) Competency Based Learning: An educational institution may award credit toward high school graduation for a competency-based learning course or course equivalent that has been approved by the Office of the State Superintendent of Education (OSSE). Each educational institution that seeks to implement a competency-based learning course or course equivalent shall submit an application to OSSE through its Local Education Agency (LEA) or equivalent. OSSE may convene a panel of content experts and stakeholders to review each application. The applications shall provide procedures for establishing and developing a competency-based course or course equivalent including the method for determining competency. OSSE shall approve the submitted plan prior to the educational institution's implementing the competency-based learning course or course equivalent. Achievement shall be demonstrated by evidence documented by course and learning experiences using multiple measures, such as, but not limited to, examinations, quizzes, portfolios, performances, exhibitions, projects and community service; or

(3) Credit Advancement: An educational institution may award credit toward high school graduation to a student who is not enrolled in the course, or who has not completed the course, if the student attains a passing score on the corresponding OSSE approved assessment. OSSE will annually issue a list of assessments approved to provide credit enhancement. In order to award credit towards graduation in this manner, an educational institution shall comply with notice and reporting requirements in this chapter; or

(4) Credit Recovery**:** An educational institution may award credit toward high school graduation to a student who previously failed a required course if the student demonstrates mastery of targeted standards. Course content for credit recovery courses shall be composed of standards in which students proved deficient rather than all standards of the original course. Educational Institutions may develop credit recovery programs which are self-paced and competency-based. Educational Institutions offering credit recovery may offer these courses using self-paced digital content programs, online courses, or course remediation programs that result in accrual of credits. In order to award credit towards graduation in this manner, an educational institution shall comply with notice and reporting requirements in this chapter.

(b) Notice and Reporting Requirement:

Each educational institution awarding credit toward graduation through credit advancement or credit recovery shall provide to OSSE:

(1) Notice Requirement: Notice of how many students will attempt to receive credit through credit recovery or credit advancement, and the respective assessments or methods the students will use, in conformance with this chapter.

(2) Reporting Requirement: A report detailing, among others, how many students received credit through credit recovery or credit advancement and the respective assessments or methods used, in conformance with this chapter.

The reports required under this section shall, to the extent practicable, conform to the format requested by OSSE.

2202.3 An educational institution may establish specialized or career focused programs or courses of study, which lead to the high school diploma in accordance with § 2202.4. These courses of study may include academic, performing arts, science and mathematics, career or vocational education focuses or other areas of concentration. The programs or courses of study may require additional coursework.

2202.4 Electives taken to fulfill the requirements of § 2202.1 shall be required to be taken in courses established by the educational institution for each area of concentration in order to receive certification in the area of concentration.

2202.5 Each student who completes the requirements for specialized courses of study shall receive appropriate recognition on the student's diploma.

2202.6 A student with special needs who does not achieve a diploma, as set forth in §§ 2202 *et seq*. shall be eligible to receive a Certificate of Individual Educational Program Completion. The decision to pursue a program leading to a Certificate of Individual Educational Program Completion shall be made by the IEP team including the parent(s) and where possible, the student. The decision shall be made no earlier than the ninth (9^{th}) grade and shall be attached to the student's IEP. Educational institutions shall comply with IDEA as addressed in Title 5-E DCMR Chapter 30 (Special Education Policy) with regards to appropriate transition assessments.

2202. 7 **Graduation Requirements for the Graduating Class of 2015**: The following coursework shall be required of students who enrolled in ninth (9th) grade for the first time in School Year 2011-2012 or a prior school year and are eligible to graduate at the end of School Year 2014-2015, in order to be certified as eligible to receive a high school diploma:

(a) A total of twenty-four (24) Carnegie Units in corresponding subjects and required volunteer community service hours shall have been satisfactorily completed for graduation.

(b) The following Carnegie Units in the following subjects shall be required:

COURSES	UNIT(S)
English	4.0
Mathematics; must include Algebra 1, Geometry, and Algebra II at a minimum	4.0
Science; must include three (3) lab sciences	4.0
Social Studies; must include World History 1 and 2, United States History; United States Government, and District of Columbia History	4.0
World Language	2.0
Art	0.5
Music	0.5
Physical Education/Health	1.5
Electives	3.5
Total	24.0

(c) At least two (2) of the twenty four (24) Carnegie Units for graduation must include a College Level or Career Preparatory (CLCP) course approved by the LEA and successfully completed by the student. The course may fulfill subject matter or elective unit requirements as deemed appropriate by the LEA. CLCP courses approved by the LEA may include courses at other institutions.

(d) All students must enroll in Algebra no later than ninth (9th) grade commencing with the 2007-2008 School Year.

(e) For all students entering the ninth (9th) grade beginning School Year 2009-2010, one (1) of the three (3) lab science units, required by paragraph (a) of this subsection, shall be a course in Biology.

(e) In addition to the twenty-four (24) Carnegie Units, one hundred (100) hours of volunteer community service shall be satisfactorily completed. The specific volunteer community service projects shall be established by the LEA.

(f) One and one half (1.5) Carnegie Units in health and physical education shall not be required for the evening program high school diploma.

2203 DIPLOMAS

2203.1 A student shall be certified by the educational institution as eligible for graduation only after the student has satisfactorily completed all academic and non-academic graduation requirements in this chapter that have not been specifically waived for that student.

2203.2 Beginning January 1, 2014, a student who has successfully completed the tests of General Educational Development (GED) in compliance with Title 5-E DCMR Sections 2320 *et seq.*, (General Educational Development (GED) Testing), the National External Diploma Program (NEDP), is enrolled in a school operated by the State, or successfully completed any additional option pre-approved by OSSE shall be eligible for a State Diploma from OSSE. Additionally, a student who is in a home schooling program that is in compliance with Title 5-E DCMR Chapter 52 (Home Schooling), shall also be eligible to receive a diploma from OSSE.

2203.3 A student may receive a high school diploma only if such student has been certified as eligible to graduate pursuant to §§ 2202 *et seq.* or § 2203.2.

2203.4 Each diploma shall bear the signature of the head of the educational institution and the seal of the educational institution in which the student is enrolled. The diploma of a student eligible under § 2203.2, shall bear the signature of the State Superintendent of Education and the seal of the Office of the State Superintendent of Education.

2203.5 If the student is receiving a diploma from another school system but is unable to attend graduation exercises held by the school system, the student may be allowed to participate in the graduation exercises of the educational institution being attended upon the approval of the head of the educational institution.

2203.6 The receipt of a high school diploma, a Certificate of Attainment or a Certificate of Individualized Education Program by an eligible student shall not be contingent upon the payment of any fee or other consideration, except the

payment of non-resident tuition fees required by statute and the provisions of Title 5-A DCMR Chapter 51 (Non-Resident Tuition Rates).

2299 DEFINITIONS

2299.1 When used in this chapter, the following terms shall have the ascribed meanings:

(a) **"Carnegie Unit"** means one hundred and twenty (120) hours of classroom instruction or one hundred and fifty (150) hours of laboratory instruction over the course of an academic year.

(b) **"Competency"** means a measure of a student's knowledge and skill in content areas that are demonstrated in various settings over time. The specific knowledge and skills are defined by state adopted standards, other content standards, and/or career readiness and life skills.

(c) **"Credit"** means successful demonstration of a specified unit of study.

(d) **"Educational institution"** means a public, public charter school, state-overseen school in the District of Columbia.

(e) **"Head of the Educational Institution"** means the legal entity or designated representative with authority to act on behalf of the educational institution in an official manner.

(f) **"High school"** means an educational institution that provides secondary level instruction to students.

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

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

(i) **"Mastery"** means a student's command of course material at a level that demonstrates a deep understanding of the content standards and application of knowledge.

(j) **"Nonpublic special education school or program"** means a privately owned or operated preschool, school, educational organization, or program, no matter how titled, that maintains or conducts classes for the purpose of offering instruction, for a consideration, profit, or tuition, to students with disabilities; provided that the term "nonpublic special education school or program" shall not include a privately owned or operated preschool, elementary, middle, or secondary school whose primary purpose is to provide educational services to students without disabilities, even though the school may serve students with disabilities in a regular academic setting.

(k) **"Office of the State Superintendent of Education" or "OSSE"** means the District of Columbia state-level agency established by Section 302(a) of the Public Education reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-2601 (2012 Repl.)).

(l) **"Portfolio"** is a collection of work that documents a student's academic performance over time and demonstrates deep content knowledge and applied learning skills. A portfolio typically includes a range of performance-based entries required by the educational institution and selected by the student, reflections, summary statements, and a final student presentation.

(m) **"Public high school"** means a public school or public charter school that provides instruction for students in the ninth (9^{th}) through twelfth (12^{th}) grades.

(n) **"School-age child"** is a child between five (5) years of age on or before September 30 of the current school year or eighteen (18) years, pursuant to D.C. Official Code § 38-202(a) (2012 Repl.).

(o) **"State Board of Education"** means the District of Columbia state-level agency established by Section 402 of the Public Education Reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code §§ 38-2651 *et seq.* (2012 Repl.)).

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than ten (10) days after the date of publication of this notice in the *D.C. Register* via email addressed to: ossecomments.proposedregulations@dc.gov; or by mail or hand delivery to the Office of the State Superintendent of Education, Attn: Jamai Deuberry re: Graduation Requirements and Diplomas, 810 First Street, NE 9^{th} Floor, Washington, DC 20002. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at www.osse.dc.gov.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance, 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.) 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, on an emergency basis, of an amendment to Section 5213 of Chapter 52 (Medicaid Reimbursement for Mental Health Rehabilitative Services) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this amendment is to establish reimbursement rates to Department of Behavioral Health-certified mental health providers for Mental Health Rehabilitation Services (MHRS) provided to consumers who are deaf or hearing-impaired. Working with individuals who are deaf or hearing impaired often requires either a clinician with specific additional skills such as the ability to use American Sign Language (ASL) or the need to have an interpreter who can translate ASL. Additionally, in order to make the physical environment ADA-compliant, welcoming, and therapeutically appropriate for individuals who are hearing-impaired, buildings and offices require specific accommodations. Recognizing the costs of these requirements, reimbursement rates for providing MHRS to individuals who are deaf or hearing impaired have been modified from the regular MHRS rates to ensure providers with the specific skills to treat individuals in this population can continue to operate.

Additionally, the section has been updated to reflect the current name of the District of Columbia's State Medicaid agency, the Department of Health Care Finance (DHCF), formerly known as the Medicaid Assistance Administration (MAA); and the current name of the Department of Behavioral Health (DBH), formerly the Department of Mental Health (DMH).

Issuance of these rules on an emergency basis is necessary to ensure the continued provision of these critical mental health services to District residents with mental illness who are deaf or hearing-impaired. Service providers are unable to continue such services without sufficient reimbursement rates that allow the providers to provide services with the additional trained personnel and adjustments to the physical environment. Thus emergency action is necessary for the immediate preservation of the health, welfare, and safety of children, youth, and their families with mental illness who are also deaf or hearing-impaired and in need of mental health services.

The emergency rulemaking was adopted on November 18, 2014, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days, expiring March 18, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 5213 of Chapter 52, MEDICAID REIMBURSEMENT FOR MENTAL HEALTH REHABILITATIVE SERVICES, of Title 29, PUBLIC WELFARE, of the DCMR is amended to read as follows:

5213 REIMBURSEMENT

5213.1 Medicaid reimbursement for MHRS provided to consumers other than consumers who are deaf or hearing-impaired shall be determined as follows:

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
Diagnostic/ Assessment	T1023HE	An assessment, at least 3 hours in duration	$256.02
	H0002	An assessment, 40 – 50 minutes in duration to determine eligibility for admission to a mental health treatment program	$85.34
Medication Training& Support	H0034	15 minutes	$44.65 – Individual
	H0034HQ	15 minutes	$13.52 – Group
Counseling	H0004	15 minutes	$26.42 – Individual
	H0004HQ	15 minutes	$8.00 – Group
	H0004HR	15 minutes	$26.42 – Family with Consumer On-Site
	H0004HS	15 minutes	$26.42 – Family without Consumer On-Site

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
	H0004HETN	15 minutes	$27.45 – Individual Off-Site
Community Support	H0036	15 minutes	$21.97 – Individual
	H0036HQ	15 minutes	$6.65 – Group
	H0036UK	15 minutes	$21.97 – Collateral
	H0036AM	15 minutes	$21.97 – Physician Team Member
	H0038	15 minutes	$21.97 – Self-Help Peer Support
	H0038HQ	15 minutes	$6.65 – Self-Help Peer Support Group
	H0036HR	15 minutes	$21.97 – Family with Consumer
	H0036HS	15 minutes	$21.97 – Family without Consumer
	H0036U1	15 minutes	$21.97 – Community Residence Facility
	H2023	15 minutes	$18.61 – Supported Employment (Therapeutic)
Crisis/ Emergency	H2011	15 minutes	$36.93
Day Services	H0025	One day, at least 3 hours in duration	$123.05
Intensive Day Treatment	H2012	One day, at least 5 hours in duration	$164.61
Community-	H2033	15 minutes	$57.42

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
Based Intervention (Level I – Multi-Systemic Therapy)			
Community-Based Intervention (Level II and Level III)	H2022	15 minutes	$35.74
Community-Based Intervention (Level IV – Functional Family Therapy)	H2033HU	15 minutes	$57.42
Assertive Community Treatment	H0039	15 minutes	$38.04 – Individual
	H0039HQ	15 minutes	$11.51 – Group

5213.2 Medicaid reimbursement for MHRS provided to consumers who are deaf or hearing-impaired shall be determined as follows:

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
Diagnostic/ Assessment	T1023HEHK	An assessment, at least 3 hours in duration	$345.63
	H0002HK	An assessment, 40 – 50 minutes in duration to determine	$115.21

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
		eligibility for admission to a mental health treatment program	
Medication Training& Support	H0034HK	15 minutes	$60.28 – Individual
	H0034HQHK	15 minutes	$18.25 – Group
Counseling	H0004HK	15 minutes	$35.67 – Individual
	H0004HQHK	15 minutes	$10.80 – Group
	H0004HRHK	15 minutes	$35.67 – Family with Consumer On-Site
	H0004HSHK	15 minutes	$35.67 – Family without Consumer On-Site
Community Support	H0036HK	15 minutes	$29.66 – Individual
	H0036HQHK	15 minutes	$8.98 – Group
	H0036UKHK	15 minutes	$29.66 – Collateral
	H0036AMHK	15 minutes	$29.66 – Physician Team Member
	H0038HK	15 minutes	$29.66 – Self-Help Peer Support
	H0038HQHK	15 minutes	$8.98 – Self-Help Peer Support Group
	H0036HRHK	15 minutes	$29.66 – Family with Consumer
	H0036HSHK	15 minutes	$29.66 – Family without Consumer
	H0036U1HK	15 minutes	$29.66 – Community Residence

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
			Facility
	H2023HK	15 minutes	$25.12 - Supported Employment (Therapeutic)
Crisis/ Emergency	H2011HK	15 minutes	$49.85
Day Services	H0025HK	One day, at least 3 hours in duration	$166.12
Intensive Day Treatment	H2012HK	One day, at least 5 hours in duration	$222.22
Community-Based Intervention (Level I – Multi-Systemic Therapy)	H2033HK	15 minutes	$77.52
Community-Based Intervention (Level II and Level III)	H2022HK	15 minutes	$48.25
Community-Based Intervention (Level IV – Functional Family Therapy)	H2033HUHK	15 minutes	$77.52

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
Assertive Community Treatment	H0039HK	15 minutes	$51.35 – Individual
	H0039HQHK	15 minutes	$15.54 – Group

5213.3 DBH shall be responsible for payment of the District's share or the local match for all MHRS in accordance with the terms and conditions set forth in the Memorandum of Understanding between DHCF and DBH. DHCF shall claim the federal share of financial participation for all MHRS services.

5213.4 Providers shall not bill the client or any member of the client's family for MHRS services. DBH shall bill all known third-party payors prior to billing the Medicaid Program.

5213.5 Medicaid reimbursement for MHRS is not available for:

(a) Room and board costs;

(b) Inpatient services (including hospital, nursing facility services, intermediate care facility for persons with mental retardation services, and Institutions for Mental Diseases services);

(c) Transportation services;

(d) Vocational services;

(e) School and educational services;

(f) Services rendered by parents or other family members;

(g) Socialization services;

(h) Screening and prevention services (other than those provided under Early and Periodic, Screening Diagnostic Treatment requirements);

(i) Services which are not medically necessary, or included in an approved Individualized Recovery Plan for adults or an Individualized Plan of Care for children and youth;

(j) Services which are not provided and documented in accordance with DBH-established MHRS service-specific standards; and

(k) Services furnished to a person other than the Medicaid client when those services are not directed exclusively to the well-being and benefit of the Medicaid client.

Comments on this proposed rulemaking shall be submitted in writing to Claudia Schlossberg, Acting Senior Deputy Director, Department of Health Care Finance, 441 4th Street, N.W., 9th Floor South, Washington, D.C. 20001, via email to DHCFPubliccomments@dc.gov, online at www.dcregs.dc.gov, or by telephone to (202) 442-8742, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Additional copies of this proposed rule may be obtained from the above address.

ACHIEVEMENT PREP PUBLIC CHARTER SCHOOL

REQUESTS FOR PROPOSALS

IT, Security, Third Party Inspections, Material Testing

Achievement Prep Public Charter School invites all interested parties to submit proposals to provide the following services for the proposed new construction of an approximately 50,000 square foot facility and the renovation of an approximately 50,000 square foot facility:

- IT/security design-build services
- Third party inspections
- Material testing

The complete RFP can be obtained by contacting crollman@programmanagers.com.

DC MAYOR'S OFFICE ON ASIAN AND PACIFIC ISLANDER AFFAIRS

DC MAYOR'S COMMISSION ON ASIAN AND PACIFIC ISLANDER AFFAIRS

NOTICE OF REGULAR MEETING

The DC Mayor's Commission on Asian and Pacific Islander Affairs will be holding its regular meeting on Tuesday, December 16, 2014 at 6:30 pm.

The meeting will be held at the OAPIA office at One Judiciary Square, 441 4th Street NW, Suite 721N, Washington, DC 20001. The location is closest to the Judiciary Square metro station on the red line of the Metro. All commission meetings are open to the public. If you have any questions about the commission or its meetings, please contact oapia@dc.gov or Andrew Chang at andrew.chang@dc.gov. Telephone: (202) 727-3120.

The DC Commission on Asian and Pacific Islander Affairs convenes meetings to discuss current issues affecting the DC AAPI community.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

NOTICE OF CERTIFICATION OF VACANCY

Office of Ward 8 Member of the Council of the District of Columbia

The D.C. Board of Elections announces a vacancy in the Office of Ward 8 Member of the Council of the District of Columbia. The Board certified the vacancy at a Special Board meeting on December 1, 2014. The Board will conduct a Special Election to fill the Ward 8 Member of the Council of the District of Columbia Vacancy on April 28, 2015.

Prospective candidates interested in appearing on the ballot must obtain the signatures of 500 registered voters who reside in Ward 8 during the petition circulation period, which begins on Monday, December 8, 2014, and ends on Wednesday, January 28, 2015.

For more information, the public may call (202) 727-2525 (TDD: 202-638-8916) or visit the Board's website at www.dcboee.org.

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE REGISTRATION SUMMARY

As Of NOVEMBER 30, 2014

WARD	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	43,991	2,781	761	93	136	11,833	**59,595**
2	29,964	5,725	223	135	116	11,162	**47,325**
3	37,069	6,877	363	95	108	11,586	**56,098**
4	47,839	2,230	531	55	133	9,049	**59,837**
5	50,666	2,062	572	65	154	8,785	**62,304**
6	52,002	6,396	526	124	172	12,847	**72,067**
7	49,878	1,289	433	17	120	7,136	**58,873**
8	43,453	1,166	378	19	152	6,955	**52,123**
Totals	354,862	28,526	3,787	603	1,091	79,353	**468,222**
Percentage By Party	**75.79%**	**6.09%**	**.81%**	**.13%**	**.23%**	**16.95%**	**100.00%**

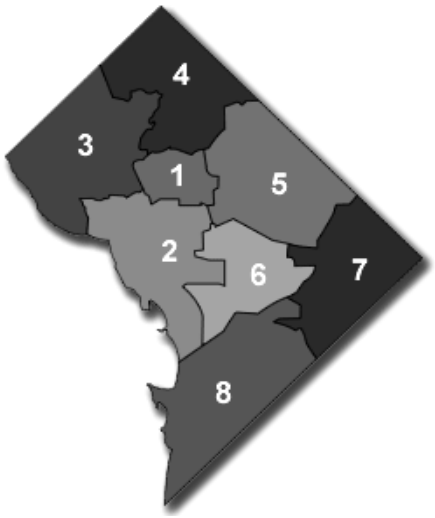
DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF

VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS

AS OF THE END OF NOVEMBER 30, 2014

COVERING CITY WIDE TOTALS BY:

WARD, PRECINCT AND PARTY



ONE JUDICIARY SQUARE
441 4TH STREET, NW SUITE 250N
WASHINGTON, DC 20001
(202) 727-2525
http://www.dcboee.org

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 1 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2014

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
20	1,436	31	7	2	7	228	**1,711**
22	3,716	338	31	8	10	996	**5,099**
23	2,815	181	55	7	7	745	**3,810**
24	2,422	239	34	7	5	767	**3,474**
25	3,813	408	65	7	6	1,150	**5,449**
35	3,439	222	65	9	7	973	**4,715**
36	4,317	272	70	5	10	1,172	**5,846**
37	3,200	136	55	7	10	748	**4,156**
38	2,771	134	63	9	11	733	**3,721**
39	4,179	216	79	6	13	1,027	**5,520**
40	3,990	203	106	9	18	1,142	**5,468**
41	3,392	191	71	10	16	1,065	**4,745**
42	1,806	67	33	3	8	486	**2,403**
43	1,707	72	19	3	4	381	**2,186**
137	988	71	8	1	4	220	**1,292**
TOTALS	**43,991**	**2,781**	**761**	**93**	**136**	**11,833**	**59,595**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 2 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2014

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
2	768	172	10	9	8	478	**1,445**
3	1,410	364	14	9	13	648	**2,458**
4	1,714	481	9	11	4	807	**3,026**
5	2,198	683	14	12	8	859	**3,774**
6	2,273	893	21	8	16	1,273	**4,484**
13	1,363	264	8	2		468	**2,105**
14	2,822	471	23	13	11	1,024	**4,364**
15	3,010	337	25	11	11	916	**4,310**
16	3,549	376	26	9	10	959	**4,929**
17	4,916	682	40	21	19	1,650	**7,328**
129	2,047	340	12	12	4	783	**3,198**
141	2,282	273	11	11	8	688	**3,273**
143	1,612	389	10	7	4	609	**2,631**
TOTALS	**29,964**	**5,725**	**223**	**135**	**116**	**11,162**	**47,325**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 3 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2014

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
7	1,230	407	19	2	2	571	**2,231**
8	2,387	618	26	4	8	763	**3,806**
9	1,138	488	8	8	8	495	**2,145**
10	1,750	424	17	7	7	656	**2,861**
11	3,382	961	43	7	11	1,439	**5,843**
12	469	192	1	0	2	212	**876**
26	2,901	350	23	5	4	942	**4,225**
27	2,438	291	16	8	4	610	**3,367**
28	2,270	527	39	9	6	755	**3,606**
29	1,217	246	9	2	7	387	**1,868**
30	1,252	224	15	3	4	281	**1,779**
31	2,372	322	22	3	8	586	**3,313**
32	2,700	323	23	4	5	617	**3,672**
33	2,895	332	30	7	8	753	**4,025**
34	3,619	481	30	13	9	1,180	**5,332**
50	2,087	287	17	5	9	489	**2,894**
136	843	122	6	3	1	326	**1,301**
138	2,119	282	19	5	5	524	**2,954**
TOTALS	**37,069**	**6,877**	**363**	**95**	**108**	**11,586**	**56,098**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 4 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2014

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
45	2,204	76	35	5	6	443	**2,769**
46	2,856	78	35	5	9	531	**3,514**
47	2,959	144	39	5	10	724	**3,881**
48	2,765	133	30	4	6	556	**3,494**
49	850	32	15	0	4	199	**1,100**
51	3,286	551	22	4	6	653	**4,522**
52	1,289	180	5	0	3	221	**1,698**
53	1,249	72	21	1	5	263	**1,611**
54	2,339	89	31	1	4	482	**2,946**
55	2,415	69	23	1	8	438	**2,954**
56	3,081	89	35	5	11	676	**3,897**
57	2,513	74	38	3	14	446	**3,088**
58	2,289	57	18	2	4	368	**2,738**
59	2,601	89	32	6	10	419	**3,157**
60	2,158	76	24	3	6	680	**2,947**
61	1,605	51	12	1	2	288	**1,959**
62	3,136	124	27	1	2	372	**3,662**
63	3,491	130	52	1	11	649	**4,334**
64	2,240	55	16	3	5	327	**2,646**
65	2,513	61	21	4	7	314	**2,920**
Totals	**47,839**	**2,230**	**531**	**55**	**133**	**9,049**	**59,837**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 5 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2014

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
19	4,138	193	67	7	7	959	**5,371**
44	2,878	219	29	4	14	674	**3,818**
66	4,516	105	40	3	9	518	**5,191**
67	3,003	97	24	1	6	402	**3,533**
68	1,915	143	30	8	8	395	**2,499**
69	2,124	70	15	2	11	268	**2,490**
70	1,449	66	22	1	3	214	**1,755**
71	2,383	61	26	1	9	335	**2,815**
72	4,439	119	27	3	17	754	**5,359**
73	1,923	85	27	6	5	350	**2,396**
74	4,208	213	56	5	9	827	**5,318**
75	3,407	158	64	9	6	791	**4,435**
76	1,359	61	14	2	4	261	**1,701**
77	2,816	95	30	4	11	483	**3,439**
78	2,936	80	34	2	9	454	**3,515**
79	1,967	74	16	3	10	331	**2,401**
135	3,013	181	43	3	11	545	**3,796**
139	2,192	42	8	1	5	224	**2.472**
TOTALS	**50,666**	**2,062**	**572**	**65**	**154**	**8,785**	**62,304**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 6 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2014

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	4,142	423	45	10	13	1,050	**5,683**
18	4,379	283	43	12	11	946	**5,674**
21	1,185	57	18	1	2	262	**1,525**
81	4,805	376	44	5	18	985	**6,233**
82	2,614	255	26	6	10	591	**3,502**
83	4,076	493	40	13	11	1,055	**5,688**
84	2,049	439	27	6	7	564	**3,092**
85	2,694	503	24	10	9	739	**3,979**
86	2,296	279	29	3	11	509	**3,127**
87	2,770	234	19	2	9	580	**3,614**
88	2,201	316	15	2	8	553	**3,095**
89	2,597	658	23	10	7	780	**4,075**
90	1,633	269	11	4	7	474	**2,398**
91	4,145	373	41	8	15	1,000	**5,582**
127	3,995	284	54	10	12	823	**5,178**
128	2,321	208	34	6	7	634	**3,210**
130	808	330	9	3	3	297	**1,450**
131	1,929	450	11	11	6	626	**3,033**
142	1,363	166	13	2	6	379	**1,929**
TOTALS	**52,002**	**6,396**	**526**	**124**	**172**	**12,847**	**72,067**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 7 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2014

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
80	1,573	88	15	1	4	271	**1,952**
92	1,656	39	11	1	6	249	**1,962**
93	1,609	46	17	2	6	227	**1,907**
94	2,069	51	18	0	3	297	**2,438**
95	1,760	42	18	0	2	312	**2,134**
96	2,444	68	22	0	9	378	**2,921**
97	1,540	39	17	1	4	203	**1,804**
98	1,870	44	23	1	6	264	**2,208**
99	1,463	41	15	1	6	237	**1,763**
100	2,269	43	15	1	4	289	**2,621**
101	1,700	30	18	1	5	186	**1,940**
102	2,540	52	23	0	4	331	**2,950**
103	3,699	95	39	2	13	587	**4,435**
104	3,132	84	22	2	12	457	**3,709**
105	2,447	61	23	1	4	398	**2,934**
106	3,058	69	22	0	8	460	**3,617**
107	1,973	61	16	0	5	304	**2,359**
108	1,144	28	8	0		125	**1,305**
109	972	33	7	0	1	96	**1,109**
110	3,817	95	24	3	7	423	**4,369**
111	2,599	57	25	0	6	379	**3,066**
113	2,274	62	20	0	3	286	**2,645**
132	2,270	61	15	0	2	377	**2,725**
TOTALS	**49,878**	**1,289**	**433**	**17**	**120**	**7,136**	**58,873**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 8 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2014

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
112	2,071	56	11	0	8	293	**2,439**
114	3,068	103	23	1	19	503	**3,717**
115	2,761	65	21	5	10	598	**3,460**
116	3,725	96	37	1	13	568	**4,440**
117	1,837	42	14	0	7	296	**2,196**
118	2,517	56	27	1	7	394	**3,002**
119	2,775	104	37	0	9	532	**3,457**
120	1,830	31	14	2	4	275	**2,156**
121	3,188	74	30	1	8	467	**3,768**
122	1,668	37	14	0	5	234	**1,958**
123	2,217	90	25	3	13	344	**2,692**
124	2,536	54	12	1	5	349	**2,957**
125	4,502	117	34	1	13	736	**5,403**
126	3,536	108	35	2	16	660	**4,357**
133	1,325	38	12	0	3	178	**1,556**
134	2,104	37	22	1	5	269	**2,438**
140	1,793	58	10	0	7	259	**2,127**
TOTALS	**43,453**	**1,166**	**378**	**19**	**152**	**6,955**	**52,123**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE REGISTRATION ACTIVITY

For voter registration activity between 10/28/2014 and 11/30/2014

NEW REGISTRATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Beginning Totals	**350,368**	**28,194**	**3,692**	**510**	**1,046**	**77,515**	**461,325**
Board of Elections Over the Counter	1	0	0	0	0	0	**1**
Board of Elections by Mail	0	0	0	0	0	0	**0**
Board of Elections Online Registration	2	0	0	0	0	0	**2**
Department of Motor Vehicle	1,011	113	19	12	7	521	**1,683**
Department of Disability Services	0	0	0	0	0	0	**0**
Office of Aging	0	0	0	0	0	0	**0**
Federal Postcard Application	0	0	0	0	0	0	**0**
Department of Parks and Recreation	0	0	0	0	0	0	**0**
Nursing Home Program	4	0	0	0	0	0	**4**
Dept. of Youth Rehabilitative Services	0	0	0	0	0	0	**0**
Department of Corrections	0	0	0	0	0	0	**0**
Department of Human Services	1	0	0	0	0	0	**1**
Special / Provisional	1,097	108	33	20	13	577	**1,848**
All Other Sources	1,224	100	22	18	8	509	**1,881**
+Total New Registrations	**3,340**	**321**	**74**	**50**	**28**	**1,607**	**5,420**

ACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Reinstated from Inactive Status	790	47	5	3	4	144	**993**
Administrative Corrections	40	4	3	0	1	1,205	**1,253**
+TOTAL ACTIVATIONS	**830**	**51**	**8**	**3**	**5**	**1,349**	**2,246**

DEACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Changed to Inactive Status	21	9	0	0	0	6	**36**
Moved Out of District (Deleted)	0	0	0	0	0	0	**0**
Felon (Deleted)	0	0	0	0	0	0	**0**
Deceased (Deleted)	21	2	0	0	0	4	**27**
Administrative Corrections	628	48	1	7	2	20	**706**
-TOTAL DEACTIVATIONS	**670**	**59**	**1**	**7**	**2**	**30**	**769**

AFFILIATION CHANGES	DEM	REP	STG	LIB	OTH	N-P	
+ Changed To Party	1,465	183	59	51	39	494	
- Changed From Party	-471	-164	-45	-4	-25	-1,582	
ENDING TOTALS	**354,862**	**28,526**	**3,787**	**603**	**1,091**	**79,353**	**468,222**

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FILING OF AN APPLICATION TO PERFORM VOLUNTARY CLEANUP

1711 Florida Avenue, NW

Pursuant to § 636.01(a) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code §§ 8-631 et seq., as amended April 8, 2011, DC Law 18-369 (herein referred to as the "Act")), the Voluntary Cleanup Program in the District Department of the Environment (DDOE), Land Remediation and Development Branch (LRDB), is informing the public that it has received an application to participate in the Voluntary Cleanup Program (VCP). The applicant for real property located at 1711 Florida Avenue, NW, Washington, DC 20009, is KJ Florida Avenue Property, LLC, 1751 Pinnacle Drive, Suite 700 McLean, Virginia, 22102. The application identifies the presence of metals in soil and petroleum compounds (TPH-DRO and TPH-GRO) and Volatile Organic Compounds in groundwater. The applicant intends to re-develop the property into a 5-story residential building.

Pursuant to § 636.01(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-1C) for the area in which the property is located. The application is available for public review at the following location:

Voluntary Cleanup Program
District Department of the Environment (DDOE)
1200 1st Street, N.E., 5th Floor
Washington, DC 20002

Interested parties may also request a copy of the application for a small charge to cover the cost of copying by contacting the Voluntary Cleanup Program at the above address or calling (202) 535-2289.

Written comments on the proposed approval of the application must be received by the VCP program at the address listed above within twenty one (21) days from the date of this publication. DDOE is required to consider all relevant public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

Please refer to Case No. VCP 2014-030 in any correspondence related to this application.

DISTRICT DEPARTMENT OF THE ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY

GRANTS for the
Wetland Conservation Plan and Registry

The District Department of the Environment ("DDOE") is seeking eligible entities to provide an update to the District's 1997 Wetland Conservation Plan. The existing plan includes: an inventory and assessment of the District's wetlands; protection mechanisms of the District government, neighboring state governments, and the federal government; and strategy and implementation plans. The project shall include written updates to the plan, a comprehensive inventory with ground truthing of District wetlands, maps and photos of wetlands at appropriate scales, the production of geospatial data and geodatabases of the information gathered, and the creation of a wetland registry.

Beginning 12/19/14, the full text of the Request for Applications ("RFA") will be available online at DDOE's website. It will also be available for pickup. A person may obtain a copy of this RFA by any of the following means:

Download by visiting the DDOE's website, www.ddoe.dc.gov. Look for the following title/section, "Resources," click on it, cursor over the pull-down "Grants and Funding," click on it, then, on the new page, cursor down to the announcement for this RFA. Click on "read more," then choose this document, and related information, to download in PDF format;

Email a request to WetlandsWQD.Grants@dc.gov with "Request copy of RFA 2015-1504-WQD in the subject line;

In person by making an appointment to pick up a copy from the DDOE offices 5th floor reception desk at 1200 First Street NE, 5th Floor, Washington, DC 20002 (call Rebecca Diehl at (202) 535-2648 and mention this RFA by name); or

Write DDOE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Request copy of RFA 2015-1504-WQD" on the outside of the letter.

The deadline for application submissions is 1/30/2015, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to WetlandsWQD.Grants@dc.gov.

Eligibility: All the checked institutions below may apply for these grants:

☒-Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;

☒-Faith-based organizations;

☒-Government agencies;

☒-Universities/educational institutions; and

☒-Private Enterprises.

Period of Awards: The end date for the work of this grant program will be 12/30/2016.

Available Funding: The total amount available for this RFA is approximately $250,000.00. The amount is subject to continuing availability of funding and approval by the appropriate agencies.

For additional information regarding this RFA, please contact DDOE as instructed in the RFA document, at WetlandsWQD.Grants@dc.gov.

EXCEL ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Data Management Services

Transaction Overview

Excel Academy PCS is seeking proposals for data management services to perform the following duties:

- Student information system audit and maintenance
- Process consulting
- Enrollment Data tracking
- Maintain attendance and discipline compliance
- Student meal reporting
- Internal reporting
- Report card generation
- Miscellaneous reporting to OSSE and DCPCSB

Bid Proposal Package

All bids must include the following information:

1. Company profile highlighting any experience with non-profits or public charter schools
2. Names and contact list for references for similar work or other relevant services
3. Cost estimates, with breakdowns for each major area: both materials and labor
4. Quote expiration date

Proposals are due Friday, January 2, 2014 by close of business at the school's offices:

Attn: Katie Proch
Excel Academy Public Charter School
2501 Martin Luther King Jr. Ave. SE
Washington, DC 20020

Electronic submissions are encouraged and can be sent to kproch@excelpcs.org

For questions or more information, please send via email to kproch@excelpcs.org. No information about the RFP will be provided individually over the phone to bidders.

FRIENDSHIP PUBLIC CHARTER SCHOOL

NOTICE OF REQUEST FOR PROPOSAL FOR

Friendship Public Charter School is seeking bids from prospective candidates to provide:

Legal Service: Friendship Public Charter School is seeking an experienced vendor /company to provide legal Services. The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement. Proposals are due no later than 4:00 P.M., EST, January 5th, 2015. No proposals will be accepted after the deadline. Questions can be addressed to ProcurementInquiry@friendshipschools.org.

Scientific Supplies And Materials for High School Science Class and Laboratory Curriculums in the Areas of Biology, Chemistry, Physics, Environmental and New Material Sciences: Friendship Public Charter School is seeking an experienced vendor /company to provide Scientific Supplies and Materials Required for High School Science Class and Laboratory Curriculums in the areas of Biology, Chemistry, Physics, Environmental and New Material Sciences. The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement.
Proposals are due no later than 4:00 P.M., EST, January 5th, 2015. No proposals will be accepted after the deadline. Questions can be addressed to ProcurementInquiry@friendshipschools.org.

H**omebound services to support students diagnosed with a medical or psychiatric condition that confines the students to the home, hospital, or other restrictive setting for at least 15 consecutive days** in accordance with requirements and specifications detailed in the Request for Proposal. . The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement. Proposals are due no later than 4:00 P.M., EST, January 5th, 2015. No proposals will be accepted after the deadline. Questions can be addressed to ProcurementInquiry@friendshipschools.org.

Interim Alternative Educational Placements: Friendship Public Charter School is seeking an experienced vendor /company to provide Interim Alternative Education Placement for special education students in grades 3-12 who are either suspended or expelled from their current educational placement. The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement. Proposals are due no later than 4:00 P.M., EST, January 5TH, 2015. No proposals will be accepted after the deadline. Questions can be addressed to ProcurementInquiry@friendshipschools.org

Program Initiatives Designed to Close the Achievement Gap of High School Students and Effectively Preparing them for College Readiness through Proven Strategies and Program Design Implementation: Friendship Public Charter School is seeking an experienced vendor /company to provide Program Initiatives Designed to Close the Achievement Gap of High School Students and Effectively Preparing them for College Readiness through Proven Strategies and Program Design Implementation. The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement. Proposals are due no later than 4:00 P.M., EST, January 5th, 2015. No proposals will be accepted after the deadline. Questions can be addressed to ProcurementInquiry@friendshipschools.org

DEPARTMENT OF HEALTH

NOTICE OF PAYMENT ADJUSTMENT

The Director of the Department of Health, pursuant to the authority set forth in section 9(c) of the District of Columbia Health Professional Recruitment Program Act of 2005 ("Act"), effective March 8, 2006 (D.C. Law 16-71; D.C. Official Code § 7-751.08(c)), hereby gives notice of the adjustment to the rate of repayment to participants in the District of Columbia Health Professional Recruitment Program established by section 3 of the Act. The payment amounts are being increased to reflect the rate of inflation since implementation of the program based on the change in the Consumer Price Index (CPI) since that time. Section 8(c) of the Act authorizes the Director to increase the dollar amount of the total loan repayment annually to adjust for inflation. Since 2014, the CPI has increased by 1.66%, therefore the new repayment amounts shall be as follows:

For physicians and dentists starting in fiscal year 2015:

For the 1st year of service, 18% of total debt, not to exceed $25,765;
For the 2nd year of service, 26% of total debt, not to exceed $37,216;
For the 3rd year of service, 28% of total debt, not to exceed $40,078; and
For the 4th year of service, 28% of total debt, not to exceed $40,078.

For all other health professionals starting in fiscal year 2015:

For the 1st year of service, 18% of total debt, not to exceed $14,170;
For the 2nd year of service, 26% of total debt, not to exceed $20,468;
For the 3rd year of service, 28% of total debt, not to exceed $22,043; and
For the 4th year of service, 28% of total debt, not to exceed $22,043.

The new loan repayment rates stated herein shall be effective upon publication of this notice in the *D.C. Register*.

DISTRICT OF COLUMBIA GOVERNMENT
HOUSING PRODUCTION TRUST FUND ADVISORY BOARD

NOTICE OF JANUARY REGULAR MEETING

The Housing Production Trust Fund (HPTF) Advisory Board announces its next Meeting on **Monday, January 5, 2015, from 10:00 A.M. to 12:00 Noon,** at the D.C. Department of Housing and Community Development, Housing Resource Center, 1800 Martin Luther King Jr., Avenue, SE, Washington, DC 20020. See below the Draft Agenda for the January meeting.

For additional information, please contact Oke Anyaegbunam, HPTF Manager, via e-mail at Oke.Anyaegbunam@dc.gov or by telephone at 202-442-7200.

DRAFT AGENDA *(as of 12.5.14):*

Call to Order, David Bowers, Chair

1) Consider and Approval Prior Meeting Summaries.

2) DHCD: Leveraging Work Group Update.

3) DHCD: Update on the Development Finance Project Pipeline.

4) Old Business
   A. Update on Communications with New Administration Leadership.

5) New Business.

6) Public Comments.

7) Announcements.

8) Adjournment.

KIPP DC PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

E-Rate Eligible Networking Equipment & Services

KIPP DC is soliciting proposals for E-Rate Eligible Networking Equipment & Services. A detailed Request for Proposal can be found on KIPP DC's website at http://www.kippdc.org/public-information/. Proposals are due no later than 5:00 P.M., EST, January 16, 2015.

NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT

Building Enclosure Consulting

KIPP DC intends to enter into a sole source contract with Halsall (A Division of Parsons Brinckerhoff, Inc.) for Building Enclosure Consulting – Construction Phase Services for its high school construction project at 1405 Brentwood Parkway NE. The decision to sole source is due to the fact that the initial consultation and design review was done by Halsall (through a contract with Studios Architecture, the architect on the project). The cost of the contract will be approximately $67,000.

LAYC CAREER ACADEMY PUBLIC CHARTER SCHOOL

LAYC Career Academy PCS (www.laycca.org) is advertising the opportunity enter a Sole Source Contract to provide furnishings for classrooms. This will include tables, chairs, white boards, moving easels, shelving, and storage. All bids must be received electronically to jeremy@laycca.org by Monday December 22 2014 at 1 PM. Specific needs such as room measurements, design preferences, and seating requirements can be obtained from:

Jeremy Vera/ or Angela Stepancic
3047 15th St NW
Washington, DC
202.319.2228

THE NOT-FOR-PROFIT HOSPITAL CORPORATION
BOARD OF DIRECTORS
NOTICE OF PUBLIC AND CLOSED MEETING

The Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will hold a Board Conference Call on **Thursday, December 18, 2014 at 10:00am.** Members of the public wishing to witness the meeting should come to 1310 Southern Avenue, SE, Washington, DC 20032, Suite 2000. Notice of the meeting will be published in the D.C. Register and posted on the Not-For-Profit Hospital Corporation's website (www.united-medicalcenter.com).

DRAFT AGENDA

I. CALL TO ORDER

II. DETERMINATION OF A QUORUM

III. APPROVAL OF AGENDA

IV. BOARD DISCUSSION

1. Revised Bylaws and Credentialing Report for Medical Staff
2. Bylaws and Performance Standards - Board

V. ANNOUNCEMENT

1. The next General Board Meeting will be held at 9:00am, January 22, 2014 at United Medical Center/Conference Room 2/3.

VI. ADJOURNMENT

NOTICE OF INTENT TO CLOSE. The NFPHC Board hereby gives notice that it may close the meeting and move to executive session to discuss collective bargaining agreements, personnel, and discipline matters. D.C. Official Code §§2-575(b)(2)(4A)(5),(9),(10),(11),(14).

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF PUBLIC MEETING AND AGENDA

District of Columbia Innovation and Technology Inclusion Council
1350 Pennsylvania Ave. NW, Room 301
Washington, DC 20004

Meeting Agenda
December 19, 2014
3:00 p.m.

1. Call to Order – 3:00 p.m.
2. Members Present
3. Discussion Regarding District Technology Industry
4. Comments from the Public
5. Adjourn – 5:00 p.m.

D.C. PREPARATORY ACADEMY

REQUEST FOR PROPOSALS

BOILER, MECHANICAL SERVICES, JANITORIAL SERVICES, SOLAR POWER PURCHASE AGREEMENT

D.C. Preparatory Academy Public Charter School (DC Prep) is seeking competitive proposals for **a boiler, mechanical services, janitorial services, and solar power purchase agreement.** Please email **bids@dcprep.org** for more details. Proposals for the boiler and mechanical services must be submitted by **12:00 noon** on **December 29, 2014.** Proposals for janitorial services and solar power purchase agreement must be submitted by **12:00 noon** on **January 23, 2015.**

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF PUBLIC MEETING

The District of Columbia Public Charter School Board ("PCSB") will be holding a meeting on Monday, January 26, 2015 at 6:30 p.m. The meeting will be held at PCSB offices located at 3333 14th Street NW, Washington, DC 20010. A final agenda will be posted to PCSB's website at www.dcpcsb.org.

For additional information, please contact PCSB offices at 202-328-2669. To submit public comment or to sign up to testify at the hearing, please email public.comment@dcpcsb.org or call 202-328-2669.

Government of the District of Columbia

Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department,	
Petitioner,	PERB Case No. 13-A-06
v.	Opinion No. 1494
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Respondent.	

DECISION AND ORDER

Before the Board is an arbitration review request ("Request") filed by Petitioner District of Columbia Metropolitan Police Department ("Department"). The Respondent Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Union") filed an Opposition. The Department bases its Request upon the Board's authority to modify, set aside, or remand an award where "the award on its face is contrary to law and public policy." D.C. Official Code § 1-605.02(6). The Request was filed timely and in compliance with section 538 of the Board's Rules. The law and public policy upon which the Department relies are Mayor's Orders 2012-28 and 2009-117. The Department contends that those orders delegated to the chief of police ("Chief") the authority to order the changes in tours of duty that are the subject of the Union's grievance in this matter. In its Opposition, the Union responds that the Department ignored the other rulings by the arbitrator and, as a result, the mayoral orders would not change the result. Regarding the mayoral orders, the Union contends that they do not constitute law and public policy and do not prove a delegation of authority. For the reasons set forth below, the Board finds that the Department has failed to present statutory grounds for setting aside the Award.

I. Statement of the Case

The Union's grievance alleged that the Department's issuance of teletypes in 2011 implementing an initiative called "All Hands on Deck" ("AHOD") violated three provisions of the parties' collective bargaining agreement ("CBA"), articles 4, 24, and 49. AHOD involved temporarily changing officers' tours of duty in order to deploy a greater number of officers to patrolling and to other duties dealing with the public during several three-day weekends.

The first provision the Department allegedly violated is article 4, wherein the Union recognizes that certain management rights, including the right to determine the tour of duty, belong to the Department "when exercised in accordance with applicable laws. . . ." The Union contended that AHOD was not in accordance with section 1-612.01(b) of the D.C. Official Code. That section requires that tours of duty be established so that "[t]he basic 40 hour workweek is scheduled on 5 days, Monday through Friday" with the same working hours in each day except "when the Mayor determines that an organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased." In the Union's view, this determination was not made. The second provision of the CBA that the Department allegedly violated was article 24. Section 1 of article 24 requires notice of any changes in days off or tours of duty to be made fourteen days in advance. Section 2 provides that "[t]he Chief or his/her designee may suspend Section 1 . . . for a declared emergency, for crime, or for an unanticipated event." The Union contended that this condition precedent was not met. Third, the Union contended that the Department failed to bargain over the orders implementing AHOD in violation of article 49 of the CBA.

The arbitrator found that the change in tours of duty was not made in accordance with section 1-612.01(b). While the Chief signed a document stating that the Department would be seriously handicapped in carrying out its functions and that costs would be substantially increased without altering work hours (Award 18), there was no valid delegation of authority for the Department to make that determination. (Award 19.) "Consequently," the arbitrator concluded, "the implementation of the 2011 AHOD initiative violated Articles 4 and 24 of the collective bargaining agreement." (Award 19.) In addition, the arbitrator found that an obligation to bargain regarding scheduling existed under Article 49. (Award 19.) Thus, the arbitrator sustained the grievance and directed the Department to rescind the teletypes announcing AHOD weekends for 2011 and restricting leave thereto. Further, the Award ordered the Department to cease and desist from changing schedules unless done in compliance with articles 4, 24, and 49 of the CBA and directed the Department to compensate officers covered by the CBA at a rate of time and one-half for all days on which their schedules were improperly changed.

In its Request, the Department asserts that the Award should be reversed because in Mayoral Order 2012-28, which the Department submitted with its post-hearing brief, the mayor delegated to the Chief all of his personnel and rulemaking authority over employees of the Department "*nunc pro tunc* to February 26, 1997." The Department contends that this "express grant of authority is, on its face, 'applicable law and definite public policy that mandates that the Arbitrator arrive at a different result.'" (Request 5.) In addition, the Department asserts that the Chief's written findings in support of the 2011 AHOD, which the Department introduced into evidence, cited Mayoral Order 2009-117. The Department contends that Mayor's Order 2009-117 delegated to the Chief the mayor's personnel and rulemaking authority over members of the Department *nunc pro tunc* to June 5, 2008. (Request 6.) The Department argues that Mayor's Order 2009-117 "provides yet another basis for the Board to hold that the Award violated law and public policy and must be reversed." (Request 7.)

II. Discussion

A. Undisputed Findings of the Arbitrator

The Department asserts that "[t]he Mayor's Order is critical, as the only basis for the Award in this matter is the Arbitrator's conclusion that there was no 'valid delegation' of authority necessary for the Chief of Police to change schedules under D.C. Official Code § 1-612.01(b)." (Request 5.) The Union counters that there were other bases for the Award that the Department failed to dispute. The Request challenges the arbitrator's ruling on the violation of article 4 resulting from noncompliance with section 1-612.01(b) but does not challenge the arbitrator's ruling on article 24 or article 49. Consequently, the Union argues, "[e]ven if PERB finds for MPD on Mayor's Order 2012-28 or 2009-117, PERB should not overturn the arbitrator's ruling because the MPD ignores numerous other rulings by the arbitrator that were expressly stated as additional reasons why, even with the introduction of the Mayor's Orders, the decision would remain unchanged." (Opp'n 5.) As those undisputed rulings support the Award, "PERB has no reason to consider the review of this matter. . . ." (Opp'n 6.)

The Union's argument requires consideration of what the arbitrator said about articles 24 and 49. Article 24 would have been violated if the Department had failed to give fourteen days' notice of the changes in tours of duty as required by section 1 of the article and the Department also had not "suspend[ed] Section 1 . . . for a declared emergency, for crime, or for an unanticipated event" as provided in section 2. The latter element of the violation is met in this case. The Award states that "there is no assertion that a crime emergency had been declared in 2011 and thus there is no issue presented that any violation of Article 24, Section 1 was vitiated by reason of a declaration of a crime emergency under Article 24, Section 2." (Award 15.) However, the Award does not find that there was a violation of article 24, section 1's notice requirement. The Department contended that the teletypes were issued well in advance of the AHOD weekends and in no case posted less than fourteen days in advance. (Award 11-12.) The Award makes no finding to the contrary. It finds a violation of both article 4 and 24 but only as a result of noncompliance with section 1-612.01(b) of the D.C. Official Code due to the lack of a valid delegation.[1] Thus, with respect to these two articles the Department is correct that "the only basis for the Award is the Arbitrator's conclusion that there was no 'valid delegation' of authority . . . under D.C. Official Code § 1-612.01(b)."

However, noncompliance with section 1-612.01(b) was not the basis for the arbitrator's finding that the Department violated article 49. Article 49 provides, that "when a Departmental order or regulation directly impacts on the conditions of employment of unit members, such impact shall be a proper subject of negotiation." The arbitrator found that "the institution of AHOD, with its scheduling and leave restriction components, impacted this vague situation

[1] "Article 4 recognizes a management right to determine tours of duty, as long as such actions are consistent with laws and regulations. That was not the case here as [there is] no valid delegation of authority for the MPD to make the determination described in D.C. Code 1.612.01(b) and modify schedules in either D.C. Code 1.612.01(a)(2). Consequently, the implementation of the 2011 AHOD initiative violated Articles 4 and 24 of the collective bargaining agreement." (Award 19.)

disclosed in the record, and an obligation to bargain existed under Article 49 under these circumstances." (Award 19.) As the Union points out (Opp'n 6), the Department does not dispute the arbitrator's finding that it violated article 49. The Request calls for the Award to be reversed (Request 8) but fails to address whether the article 49 violation is by itself a sufficient basis for the Award.

B. Arbitrator's Findings Regarding Delegation

Moreover, the Department's arguments regarding the mayoral orders that constitute its defense to a violation of article 4 are merely evidentiary issues rather than matters of law and public policy. The Department claims that Mayor's Order 2012-28 was effective *nunc pro tunc* back to February 26, 1997, whereas the arbitrator held that "[t]he effective date of Order 2012-28 was the date of its issuance,"[2] a date that was after the 2011 AHOD. In so holding, the arbitrator was interpreting an ambiguous exhibit. The document says the Chief is delegated the mayor's authority "*nunc pro tunc* to February 26, 1997," but the document, which is dated February 21, 2012, also states directly above the mayor's signature, "**EFFECTIVE DATE:** This Order shall become effective immediately." (Request, unnumbered fourth exhibit at 2) (emphasis in original.) It is neither a party's nor the Board's interpretation of the evidence for which the parties bargained but rather the arbitrator's. *Dep't of Recreation & Parks and AFGE, Local 2741*, 46 D.C. Reg. 4406 Slip Op. No. 579 at 2, 2 n.1, PERB Case No. 99-A-01 (1999).

The other mayoral order upon which the Department relies, Mayor's Order 2009-117, simply was not put into evidence. The Chief's reference to it in her written findings in support of the 2011 AHOD was not, in the estimation of the arbitrator, which we find unreviewable, sufficient support for the Department's affirmative defense that it had been delegated authority to make a determination pursuant to section 1-612.01(b). (Award 17.) The weight and the significance of evidence are within the arbitrator's discretion, and a dispute over the exercise of that discretion does not state a statutory basis for modifying or setting aside the Award. *D.C. Hous. Auth. and AFGE, Local 2725*, 46 D.C. Reg. 6882, Slip Op. No. 591 at p. 2, PERB Case No. 99-A-04 (1999).

For the foregoing reasons, we find that the Department has failed to present statutory grounds for setting aside the Award.

[2] Award 17.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration award is sustained.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Members and Members Donald Wasserman and Keith Washington

Washington, D.C.
November 20, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision in PERB Case No. 13-A-06 was transmitted to the following parties on this the 24th day of November 2014.

Anthony M. Conti
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/s/ Sheryl V. Harrington
Sheryl V. Harrington
Secretary

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
David Antoine, Donna G. Green, Michael Lane, and Robert Mills,	PERB Case No. 14-U-17
Complainants,	Opinion No. 1496
v.	
International Brotherhood of Teamsters, Local 730,	Decision and Order
Respondent.	

DECISION AND ORDER

I. Statement of the Case

The Complainants in this case filed an unfair labor practice complaint alleging that the International Brotherhood of Teamsters, Local 730 ("Union"), failed to represent them during negotiations of an initial collective bargaining agreement ("CBA") with Complainants' employing agency, the D.C. Department of General Services ("DGS"), when the Union disclaimed the units. Further, Complainants allege that the Union failed to provide the bargaining units with a written copy of its disclaimer after Complainants requested that it do so. Finally, Complainants allege the Union violated its duty of fair representation because the disclaimer left the bargaining units unprotected.

The issues before PERB are: 1) whether the Union's disclaimer of the bargaining units it represented during contract negotiations constitutes an unfair labor practice or a violation of the standards of conduct under the Comprehensive Merit Personnel Act ("CMPA"); and 2) whether the Union had an obligation to pursue interest arbitration after the membership rejected DGS'

last, best and final offers dealing with certain compensation items. The Union denies that it committed either a standards of conduct violation or an unfair labor practice and raises in its Answer to the Complaint the affirmative defense that the Complaint fails to state a violation of the applicable Standards of Conduct. Respondent further asserts that it had no obligation to continue to represent the Complainants' bargaining units after protracted negotiations failed to yield an agreement. For the reasons discussed herein, PERB dismisses the complaint in its entirety.

II. Background

The Union was certified as the exclusive representative of the Complainants' bargaining units in PERB Case No. 06-RC-03, Certification Nos. 142 and 143 (2008).[1] According to the Certifications, the Union represented two (2) units consisting of both full and part-time employees, some of whom were in skilled, professional and non-professional positions.[2] The Complainants served on the negotiation team, consisting of 2 members from each unit.[3] For approximately seven (7) years, the Union attempted to negotiate an initial collective bargaining agreement on behalf of the two units.[4] It is undisputed that the Union did not collect any dues from the bargaining units' members during the entire seven (7) year negotiation period, and there is no evidence that a dues check-off agreement was negotiated with DGS.[5] In fact, no collective bargaining agreement was ever agreed upon or adopted.[6] On January 23, 2014, the Union met with Complainants and presented them with DGS's last, best and final offers.[7] The Union informed Complainants at that meeting that if the bargaining units rejected DGS's offers, the Union would consider disclaiming the bargaining units because it could not continue to subsidize the units through impasse and interest arbitration proceedings.[8] When the bargaining units rejected the agency's last best offers, the Union promptly notified DGS representatives in writing that it had "unconditionally and irrevocably" disclaimed any interest in representing the bargaining units.[9]

Complainants argue that the Union failed to represent their interests during the negotiations which caused them "loss of full pay and salary commensurate with their daily duties and functions."[10] Complainants state that when they voted to reject the agency's last best offer, they expected the Union to declare an impasse and advance the negotiations to arbitration, not to disclaim the bargaining units.[11] Although the Complainants admit that the Union did advise

[1] (Complaint, Exhibit 3).
[2] *Id.*
[3] *Id.*
[4] (Complaint at 1).
[5] *Id.* at 1-2.
[6] (Answer at 2).
[7] *Id.*
[8] *Id.*
[9] (Answer at 2-3); *see also* (Complaint, Exhibit 4).
[10] (Complaint at 1).
[11] *Id.* at 2-3.

them informally of its intent to disclaim the units, they nonetheless allege that the Union never provided its written disclaimer to the bargaining units despite Complainants' specific written request that it do so.[12] Complainants argue that the Union's disclaimer left the bargaining units unprotected, and therefore the Union breached its duty to properly and fairly represent the units pursuant to PERB's order in Case No. 06-RC-03, Certification Nos. 142-143.[13] Complainants' state that as a remedy, they are seeking "clarification of PERB's orders and a ruling which states that the Union has acted illegally and improperly, as well as guidance which will ensure the protection of [the bargaining units'] rights."[14]

III. Analysis

A. Preliminary Issues

The Complaint in this matter is styled as an unfair labor practice ("ULP") complaint (presumably under D.C. Official Code §§ 1-617.04(b)(1) and (3)).[15] However, the allegation that the Union breached its duty to fairly represent its members during negotiations more closely resembles a standards of conduct ("SOC") complaint[16] under D.C. Official Code § 1-617.03(a)(1).[17] Because *pro se* litigants are entitled to a liberal construction[18] of their pleadings when determining whether a proper cause of action has been alleged,[19] PERB will evaluate Complainants' allegations both as a ULP complaint and as a SOC complaint.[20]

Additionally, PERB Rules 520.8 and 544.8 state: "[t]he Board or its designated representative shall investigate each complaint." PERB Rules 520.10 and 544.10 state that "[i]f the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings...." However, PERB Rules 520.9 and 544.9 state that if "the

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[12] *Id.* at 3.
[13] *Id.*
[14] *Id.*
[15] D.C. Official Code §§ 1-617.04(b)(1) and (3): "Employees, labor organizations, their agents, or representatives are prohibited from: (1) Interfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter; ... (3) Refusing to bargain collectively in good faith with the District if it has been designated in accordance with this chapter as the exclusive representative of employees in an appropriate unit."
[16] See *Charles Bagenstose v. Washington Teachers' Union, Local No. 6*, 59 D.C. Reg. 3808, Slip Op. No. 894 at ps. 7-8, PERB Case No. 06-U-37 (2007) (holding that unions have a duty to fairly represent their members, and will breach that duty if they engage in conduct that is arbitrary, discriminatory, or in bad faith).
[17] D.C. Official Code § 1-617.03(a)(1): "(a) ... A labor organization must certify to the Board that its operations mandate the following: (1) ...fair and equal treatment under the governing rules of the organization...."
[18] PERB precedent holds that the term "liberal construction" means giving Complainants a reasonable opportunity to present their case without undue focus on technical flaws or imperfections. See *Charles Bagenstose v. Washington Teachers' Union, Local No. 6*, 59 D.C. Reg. 3808, Slip Op. No. 894 at p. 3, PERB Case No. 06-U-37 (2007) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); and *Mack v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 49 D.C. Reg. 1149, Slip Op No. 443 at p. 2, PERB Case No. 95-U-16 (1995)).
[19] See *Thomas J. Gardner v. District of Columbia Public Schools and Washington Teachers' Union, Local 67, AFT AFL-CIO*, 49 D.C. Reg. 7763, Slip Op. No. 677, PERB Case Nos. 02-S-01 and 02-U-04 (2002).
[20] See PERB Rule 501.1, which states that "[t]he rules of the Board shall be construed broadly to effectuate the purposes and provisions of the CMPA."

investigation reveals that the pleadings present an issue of fact warranting a hearing, the Board shall issue a Notice of Hearing and serve it upon the parties."

In this matter, Respondents generally denied Complainants' legal conclusions, but did not dispute the Complaint's underlying alleged facts, which are the following: (1) the Union notified Complainants and other members of the negotiation team that if the bargaining units rejected DGS's last best offers, it would consider disclaiming representation of the bargaining units; (2) the bargaining units rejected the agency's last best offers; and (3) the Union disclaimed its interest in representing the bargaining units.[21] Because these facts are undisputed by the parties, leaving only legal questions to be resolved, PERB finds it can properly decide this matter based upon the pleadings in the record in accordance with PERB Rules 520.10 and 544.10.[22]

B. Complainants' Allegations Do Not Establish that the Union Committed an Unfair Labor Practice

In order for PERB to find that the Union committed an unfair labor practice under D.C. Official Code §§ 1-617.04(b)(1) or (3), Complainants must demonstrate that the Union acted in bad faith when it disclaimed its interest in representing the bargaining units, and/or that it interfered with, restrained, or coerced the bargaining units in the exercise of their rights.

In the absence of any PERB caselaw governing disclaimers or similarly alleged conduct, PERB turns to precedents established by the National Labor Relations Board ("NLRB").[23] NLRB caselaw holds that "an exclusive bargaining agent may avoid its statutory duty to bargain on behalf of the unit it represents by unequivocally and in good faith disclaiming further interest in representing the unit."[24] In order to meet the "unequivocal" and "good faith" requirements, the disclaiming Union must not engage in conduct that is inconsistent with its disclaimer,[25] such as collecting dues,[26] picketing,[27] making demands on the employer,[28] initiating new grievances,[29]

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[21] (Complaint at 1-3, Exhibit 4); (Answer at 1-4).

[22] *See Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 60 D.C. Reg. 5337, Slip Op. No. 1374 at p. 11, PERB Case No. 06-U-41 (2013); *see also American Federation of Government Employees, AFL-CIO Local 2978 v. District of Columbia Department of Health*, 60 D.C. Reg. 2551, Slip Op. No. 1356 at p. 7-8, PERB Case No. 09-U-23 (2013).

[23] *See American Federation of Government Employees, Local 631 v. District of Columbia Water and Sewer Authority*, 60 D.C. Reg. 16462, Slip Op. No. 1435 at p. 9, PERB Case No. 13-N-05 (2013) (*citing American Federation of Government Employees, Local 2741 v. D.C. Dep't of Parks and Recreation*, 50 D.C. Reg. 5049, Slip Op. No. 697 at p. 4, PERB Case No. 00-U-22 (2002)).

[24] *Production and Maintenance Union, Local 101, Chicago Truck Drivers Union (Bake-Line Products) and Efrain Jimenez, Bake Line Products, Inc.*, 329 NLRB 247, 248 (1999) (*citing Dycus v. NLRB*, 615 F2.d 820 (9th Cir. 1980), eng. sub nom. *Teamsters Local 42 (Grinnell Fire Protection)*, 235 NLRB 1168 (1978)).

[25] *Id.*

[26] *See American Sunroof Corporation – West Coast, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, United Auto Workers*, 243 NLRB 1128, 1129 (1979).

[27] See *Queen's Table, Inc.b/b/a Rochelle's Restaurant and Local California Joint Executive Board of Hotel and Restaurant Employees and Bartenders, International Union of Long Beach and Orange County, AFL-CIO*, 152 NLRB 1401, 1402-03 (1965).

or otherwise holding itself out to still be the bargaining unit's representative.[30] Furthermore, the disclaimer cannot have been effectuated for an improper purpose, such as seeking to evade the terms and obligations of a collective bargaining agreement.[31] The NLRB reasons that when a union disclaims a bargaining unit, it does not breach its duty of fair representation because that duty "is the corollary to a union's power and authority to act as the exclusive representative of a bargaining unit" and that "[w]hen a union relinquishes its authority to do so, the corresponding duty of fair representation terminates."[32]

In this case, PERB finds that there is no evidence to support Complainants' allegation that the Union failed to represent the bargaining units during negotiations. Complainants assert that in or around 2007, the units had been mis-categorized by the District when they were transferred from D.C. Public Schools ("DCPS") to the Office of Public Education Facilities Modernization ("OPEFM"), and that that mis-categorization resulted in a pay disparity.[33] The disparity was not corrected when they were again transferred from OPEFM to the Department of General Services ("DGS") in 2011.[34] Complainants state that the bargaining units rejected the agency's last best offer because the offer did not correct the disparity.[35] Notwithstanding, PERB finds there is no evidence that the Union unfairly represented the bargaining units during the negotiations. On the contrary, the facts that the Union represented the units during CBA negotiations for seven (7) years without collecting any dues and successfully negotiated a 3% pay increase for the units in FY 2013, with additional 3% increases each year until FY 2017, all demonstrate that the Union properly fulfilled its duty to represent the units in good faith during the negotiations.[36] Further, since Complainants have not presented any evidence to show that the Union's actions in any way caused the pay disparity, PERB finds that the Union's actions during negotiations did not interfere with, restrain, or coerce the bargaining units in the exercise of their rights under D.C. Official Code § 1-617.04(b)(3).

Additionally, there is no evidence that the Union's unwillingness to continue subsidizing the bargaining units through the impasse and arbitration processes violated D.C. Official Code §§ 1-617.04(b)(1) or (3). In *Chicago Truck Drivers Union, supra*, 329 NLRB at 249, the NLRB found that a union can lawfully warn its members that it will disclaim them if the members vote to support a course of action that will hinder the union's ability to collect dues. The NLRB reasoned that:

> ...[T]here is a necessary connection between a union's collection of dues and a union's continued representation of employees. It is an economic reality that a union needs the assured payment of dues

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[28] *Id.*
[29] *Chicago Truck Drivers Union, supra*, 329 NLRB at 248 (citing *Dycus, supra*).
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] (Complaint at 2).
[34] *Id.*
[35] *Id.* at 2-3.
[36] *Id.*

> from at least some employees in order to afford continuing to represent them. *Automotive & Allied Industries Local 618 (Sears, Roebuck & Co.)*, 324 NLRB 865, 866 fn. 12 (1997). A union [reasonably needs] assurance that a sufficient number of employees will make regular payments on a voluntary basis. Thus, when a union says it may disclaim representation if [that ability to collect dues is threatened], this is a statement based on the objective reality of representation.[37]

While PERB acknowledges that labor organizations are generally charged with the primary responsibility to negotiate a collective bargaining agreement, it must be able to finance this endeavor with the payment of membership dues.[38] In the instant case, the bargaining units' employees had not paid dues—nor were any collected—during the entire seven (7) years of negotiations. Further, it is undisputed that the Union fully and in good faith allowed the Complainants to participate in negotiations, despite the fact that they were not dues paying members.[39] When the agency made its last best offer, which would have finalized a collective bargaining agreement and allowed the Union to begin collecting dues, the Union lawfully warned Complainants that if the bargaining units rejected DGS's offer, the Union would consider disclaiming them.[40] Based on the above-cited precedent, the Union's forewarning and disclaimer were lawful because the bargaining units' rejection hindered the Union's ability to collect dues.[41] Accordingly, PERB finds that neither the Union's warning nor its eventual disclaimer violated D.C. Official Code §§ 1-617.04(b)(1) or (3).

Additionally, despite Complainants' expectations, the Union had no obligation to continue subsidizing the bargaining units through a potentially costly impasse and arbitration process.[42] As stated above, a union can avoid its statutory duty under D.C. Official Code § 1-617.04(b)(3) to bargain on behalf of the unit it represents for almost any reason as long as: it unequivocally and in good faith disclaims its interests in representing the unit; the disclaimer is not for an improper purpose such as attempting to avoid the terms and conditions of a collective bargaining agreement; and the union does not act in a manner that is inconsistent with the disclaimer.[43] In this case, the Union was the bargaining units' certified representative, and properly discharged its statutory duty when it pursued contract negotiations for a protracted period of time with the Complainants as members of the negotiation team.[44] Further, PERB has

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[37] *Chicago Truck Drivers Union, supra*, 329 NLRB at 249.
[38] *Id.*
[39] As a rule, those who are not members of the union have no right to vote or participate in the meetings of the labor organization, "including those called to ratify contract proposals." *American Federation of Government Employees, Local 2000 and Massengale*, 14 FLRA 617, 631 (1984).
[40] (Complaint at 2-3, and Exhibit 4); (Answer at 2).
[41] *Chicago Truck Drivers Union, supra*, 329 NLRB at 249; *see also Brewery Drivers and Helpers Local Union 133, Affiliated with the International Brotherhood of Teamsters, AFL-CIO (Riverfront Distributing, Inc.) and Glenn Mitchell*, 14-CB-8376 (NLRB Div. of Judges 1995).
[42] (Complaint at 2-3).
[43] *Chicago Truck Drivers Union, supra*, 329 NLRB at 248-249.
[44] *Id.* at 249; (Answer at 3).

already found that the Union's stated reason for disclaiming the units—that it could not afford to continue subsidizing the units during the impasse and arbitration process—was reasonable and did not constitute bad faith.[45] Furthermore, the record shows that the Union did not disclaim the units for an improper purpose such as trying to avoid the terms of a collective bargaining agreement because there was no collective bargaining agreement to avoid.[46] Nor is there any evidence in the record to show that the Union's actions were discriminatory, arbitrary, or done in bad faith.[47] Finally, Complainants have not shown that the Union engaged in conduct that was in any way inconsistent with its disclaimer, such as continuing to collect dues or otherwise holding itself out to still be the bargaining units' representative. Therefore, PERB rejects Complainants' argument that the Union violated D.C. Official Code §§ 1-617.04(b)(1) or (3) when it elected not to declare impasse and represent the bargaining units through the arbitration process.

In regard to Complainants' argument that the Union violated D.C. Official Code §§ 1-617.04(b)(1) or (3) when it failed to provide a written copy of its disclaimer to the bargaining units, Complainants did not cite—nor can PERB find—any caselaw that establishes a duty on the part of a union to provide a written copy of its disclaimer to the bargaining unit. Indeed, in most cases the union's formal notice of disclaimer was only provided to the employer.[48] In this case it is uncontested that the Union forewarned Complainants that it would disclaim the bargaining units if they rejected DGS's last best offer, and Complainants acknowledge that the Union provided them verbal notice of its disclaimer once the units' rejected the offer.[49] Accordingly, in the absence of any caselaw that required the Union to provide a written copy of its disclaimer to the bargaining units, PERB finds that the Union did not commit a an unfair labor practice, nor a standards of conduct violation when it elected to only provide verbal notice of its disclaimer to Complainants.[50]

Lastly, PERB finds that Complainants' argument that the Union's disclaimer left the bargaining units unprotected in violation of PERB's order in Case No. 06-RC-03, Certification Nos. 142-143, likewise fails. As previously stated, PERB finds that the Union's disclaimer of interest met the "unequivocal" and "good faith" requirements; that it was not for an improper purpose; and that the Union's conduct was not inconsistent with the disclaimer in any manner.[51] Additionally, nothing in the Union's disclaimer prevented the bargaining units from soliciting another union to represent them once the disclaimer was issued. Therefore, under the NLRB

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[45] *Id.*
[46] *Id.* at 248; (Answer at 2).
[47] *Id.*
[48] *See Dycus, supra,* 615 F.2d. at 824 (where the union only provided notice of its disclaimer to the employer, not to the bargaining unit); *Queen's Table, supra,* 152 NLRB at 1403 (where the NLRB found that the union's disclaimer was not valid in part because the union failed to notify the employer that it had disclaimed the bargaining unit, but made no such finding regarding the union's failure to notify the bargaining unit); *and United Steel Workers of America, Local 14693, AFL-CIO-CLC and Skibeck, P.L.C., Inc.,* 345 NLRB 754 at (2005) (wherein the NLRB noted that bargaining unit members learned of the union's disclaimer only after it had been delivered to the employer).
[49] (Complaint at 2-3).
[50] (Complaint at 3, and Exhibit 4); (Answer at 2).
[51] *Chicago Truck Drivers Union, supra,* 329 NLRB at 248-249.

precedents discussed above, which PERB hereby adopts, the Union is no longer statutorily obligated under D.C. Official Code § 1-617.04(b)(3) to represent the bargaining units.[52]

Accordingly, based on the foregoing, PERB finds that the Complainants have not stated any allegations that, if proven, would constitute an unfair labor practice under D.C. Official Code §§ 1-617.04(b)(1) or (3).

C. Complainants' Allegations Do Not Constitute a Standards of Conduct Violation

PERB precedent holds that in order for PERB to find that the Union violated its duty to fairly represent the bargaining units under the standards of conduct stated in D.C. Official Code § 1-617.03(a)(1), Complainants must demonstrate that the Union's conduct was arbitrary, discriminatory, or done in bad faith, or was based on irrelevant, invidious, or unfair considerations.[53] In *Katrina Osborne, et. al v. AFSCME, Local 2095, et al.*, Slip Op. No. 713 at p. 5, PERB Case Nos. 02-U-30 & 02-S-09 (May 21, 2003), PERB stated:

> "Under [D.C. Official Code § 1-617.03(a)(1)], a member of the bargaining unit is entitled to 'fair and equal treatment under the governing rules of the [labor] organization'. As [the] Board has observed: '[the union] as the statutory representative of the employee is subject always to complete good faith and honesty of purpose in the exercise of its discretion regarding the handling of union members' interest'." *Stanley Roberts v. American Federation of Government Employees*, Local 2725, 36 D.C. Reg. 1590, Slip Op. No. 203 at p. 2, PERB Case No. 88-S-01 (1989). The Board has determined that "the applicable standard in cases [like this], is not the competence of the union, but rather whether its representation was in good faith and its actions motivated by honesty of purpose. ... [Furthermore,] 'in order to breach this duty of fair representation, a union's conduct must be arbitrary, discriminatory or in bad faith, or be based on considerations that are irrelevant, invidious or unfair'." *Id.*

In this case, PERB has already found herein that nothing in the Union's alleged actions constituted bad faith. Indeed, the Union diligently represented the units for seven (7) years and negotiated a collective bargaining proposal that would have given the units annual 3% raises between FY 2013 through FY 2017.[54] There is simply no evidence that the Union's negotiations leading up to or at the time of that offer constituted bad faith.[55] Nor was it bad faith when the

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[52] *Id.*

[53] *Dr. Henry Skopak v. D.C. Commission on Mental Health Services and Doctors Council of the District of Columbia*, Op. No. 737 at ps. 3, 5, PERB Case Nos. 02-S-07 and 02-U-21 (May 24th 2004).

[54] (Complaint at 2).

[55] *Osborne, et. al v. AFSCME, et al., supra*, Slip Op. No. 713 at p. 5, PERB Case Nos. 02-U-30 & 02-S-09.

Union reasonably determined that it could not afford to subsidize the units through the potentially costly impasse and arbitration process once the units rejected DGS's offer.[56]

Additionally, the Union's forewarning to Complainants that it would disclaim the units if they rejected DGS's last best offer demonstrates that the Union maintained an honesty of purpose and that it did not attempt in any way to deceive or mislead the members.[57] Similarly, based on the reasoning stated above that unions have a right to be concerned about the costs of representing a bargaining unit, PERB finds that the Union's disclaimer did not constitute an improper exercise of its discretion regarding the handling of the bargaining units' interests.[58]

Finally, Complainants have not offered any evidence to show that the Union's actions or the purposes behind them were arbitrary, discriminatory, irrelevant, intentionally invidious, or unfair, or that there were any other matters (e.g., grievances, other representation matters, etc.) still pending when the Union issued the disclaimer.[59] Additionally, Complainants have not alleged that the Union's disclaimer in any way prevented the bargaining units from seeking alternative representation.

Therefore, in accordance with the established precedents stated herein, PERB finds no evidence that the Union violated its duty of fair representation under D.C. Official Code § 1-617.03(a)(1).[60]

D. Decision

Based on the foregoing, PERB finds that the Complainants have not stated any allegations that, if proven, would constitute an unfair labor practice or a standards of conduct violation. Accordingly, the complaint is dismissed in its entirety with prejudice.

[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed in its entirety with prejudice.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Donald Wasserman and Keith Washington

November 20, 2014

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-U-17, Opinion No. 1496, was transmitted *via* File & ServeXpress and U.S. Mail to the following parties on this the 24th day of November, 2014.

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/s/ Sheryl Harrington
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO,	PERB Case No. 10-I-06
Complainant,	Opinion No. 1497
and	Decision and Order
District of Columbia Child and Family Services Agency,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO ("AFSCME") filed a Declaration of Impasse ("Declaration") pursuant to PERB Rule 527 *et seq.* in connection with impact and effects ("I&E") bargaining with the District of Columbia Child and Family Services Agency ("CFSA"). PERB's then Executive Director found the parties were at impasse and assigned the case to mediation through the Federal Mediation & Conciliation Service ("FMCS"). Commissioner Lynn Sylvester was appointed as mediator. The parties met with Commissioner Sylvester at least once, but were unable to reach a resolution. On June 4, 2014, AFSCME's counsel verbally requested that the case be referred to interest arbitration in accordance with PERB Rule 527.5. For the reasons stated below, the Board finds that there is no need to advance this matter to arbitration. Accordingly, AFSCME's request is denied and the case is dismissed.

II. Background

On May 6, 2010, CFSA announced that it would conduct a Reduction-in-Force ("RIF") of approximately 57 employees represented by AFSCME. Specifically, CFSA stated it would eliminate 57 Social Service Assistant ("SSA") positions, and create 35 new Family Support Worker ("FSW") positions[1], which would require a Bachelor's degree.[2] At the request of the Union, the parties engaged in I&E bargaining and met three (3) times in May 2010.[3]

During negotiations, AFSCME proposed that CFSA retain the SSA's and give them four (4) years to meet the new degree requirement. CFSA counter-proposed with an offer to give the SSA's until the end of the calendar year (approximately seven (7) months) to meet the requirement.[4] AFSCME's final offer proposed that CFSA give the employees seven (7) semesters (or approximately three and a half (3.5) years) to obtain the degree.[5] CFSA rejected AFSCME's final proposal and stated it would not deviate from its final offer to give the employees until the end of the calendar year to obtain the degree.[6] On May 27, 2010, AFCSME filed the instant Declaration of Impasse and Request for Impasse Resolution.

On September 9-10, 2010, the Board's former Executive Director, Blanca Torres, found the parties were at impasse, assigned the matter to FMCS for mediation, and appointed Commissioner Sylvester to serve as the mediator. The parties met with Commissioner Sylvester on October 21, 2010, but were unable to reach a resolution.

In addition to the instant Impasse case, AFSCME also filed: (1) a Negotiability Appeal (PERB Case No. 10-N-03) seeking an order on whether its final proposal to give SSA's 3.5 years to obtain a degree was nonnegotiable[7]; and (2) an Unfair Labor Practice Complaint (PERB Case 10-U-37) alleging that CFSA's acted in bad faith when it declared AFCSME's proposal to be nonnegotiable.[8]

In April 2014, the Board found in PERB Case 10-N-03 that AFSCME's final proposal during I&E bargaining was nonnegotiable pursuant to the Abolishment Act, D.C. Official Code § 1-624.08(j), and the Omnibus Personnel Reform Amendment Act, 1998 D.C. Law 12-124 (Act 12-326).[9] Furthermore, in PERB Case No. 10-U-37, the Board found that CFSA did not act in

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[1] SSAs were positions in Grades 6, 7, and 8, whereas FSWs are Grade 9.
[2] (Declaration at 1-2).
[3] *Id.* at 2.
[4] *Id.* at 2-3.
[5] *Id.* at 3.
[6] *Id.*
[7] *See American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO and District of Columbia Child and Family Services Agency*, 61 D.C. Reg. 5602, Op. No. 1462 at ps. 2-3, PERB Case No. 10-N-03 (2014).
[8] See *American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO and District of Columbia Child and Family Services Agency*, 61 D.C. Reg. 5608, Op. No. 1463 at p. 1, PERB Case No. 10-U-37 (2014).
[9] *AFSCME and CFSA, supra*, Op. No. 1462 at ps. 4-5, PERB Case No. 10-N-03.

bad faith when it declared AFSCME's final proposal nonnegotiable, and accordingly dismissed AFSCME's unfair labor practice complaint.[10] AFSCME did not appeal either decision.

III. Analysis

PERB Rule 527 *et seq.* states that when a party has declared an impasse in non-compensation bargaining, the Board "may" direct that mediation, fact-finding, and/or interest arbitration be utilized to help resolve the impasse. The use of the word "may" indicates that the Board has discretion in determining whether or not to advance an impasse to fact-finding or arbitration.[11] While PERB has contemplated scenarios in which impasses reached during I&E bargaining should be advanced to interest arbitration,[12] for the following reasons the Board finds that this case is not one of those instances.

CFSA unquestionably had a duty to engage in good faith I&E bargaining when it announced its intention to conduct the RIF,[13] but that duty did not require the parties to reach an ultimate agreement when I&E negotiations reached impasse. Under Board caselaw, when I&E bargaining has been requested by the exclusive representative, the agency fulfills its duty to bargain in good faith by going beyond "simply discussing" its proposal with the union, and by doing more than merely requesting the union's input.[14] Furthermore, the agency's participation cannot constitute mere "surface bargaining", and the agency cannot engage in conduct at or away from the table that intentionally frustrates or avoids mutual agreement.[15] Rather, there must be a give and take, with the negotiations entailing full and unabridged opportunities by both parties to advance, exchange, and reject specific proposals.[16] Even so, because the matter being bargained is a management right, I&E bargaining cannot be expected to continue in perpetuity until an agreement is reached in every case. In some matters, depending on the circumstances, it must be concluded that the agency's duty has been fulfilled and that additional bargaining is not required.[17]

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[10] *AFSCME v. CFSA, supra*, Op. No. 1463 at ps. 9-13, PERB Case No. 10-U-37.

[11] *Lo Shippers Action Committee v. Interstate Commerce Commission, et al.*, 857 F.2d 802, 806 (D.C. Cir. 1988) (holding that just as the use of the word "shall" indicates the absence of discretion, the use of "may" indicates its presence unless there is some modifying context to suggest the construction of the word "may" is mandatory).

[12] *See American Federation of Government Employees, Locals 872, 1975 and 2553 v. District of Columbia Department of Public Works*, 49 D.C. Reg. 1145, Op. No. 439 at p. 4, PERB Case Nos. 94-U-02 and 94-U-08 (1995).

[13] *See AFSCME v. CFSA, supra*, Op. No. 1463 at p. 9, PERB Case No. 10-U-37.

[14] *American Federation of Government Employees, Local 383 v. District of Columbia Department of Health*, 52 D.C. Reg. 2527, Op. No. 753 at f. 6, PERB Case No. 02-U-16 (2004).

[15] *American Federation of Government Employees, Local 383 v. District of Columbia Department of Disability Services*, 59 D.C. Reg. 10771, Op. No. 1284 at p. 3, PERB Case No. 09-U-56 (2012).

[16] *District Council 20, American Federation of State, County and Municipal Employees, Local 709, et al. v. Government of the District of Columbia, et al.*, 43 D.C. Reg. 1148, Op. No. 343 at p. 8, PERB Case No. 92-U-24 (1993).

[17] *See AFGE, Local 383 v. DDS, supra*, Op. No. 1284 at p. 4, PERB Case No. 09-U-56 (holding that the agency did not violate its duty to bargain in good faith just because the parties did not reach an agreement).

In this case, all of above stated factors were met. The parties engaged in negotiations on at least four (4) occasions,[18] wherein they exhausted an exchange of various proposals and counter-proposals. Those negotiations eventually reached impasse when both parties declared that they were unwilling to deviate from their respective last best offers. However, AFSCME's last best offer to give SSA's 3.5 years to obtain a degree was determined by the Board to be nonnegotiable in PERB Case No. 10-N-03. CFSA's last best offer to give the SSA's until December 31, 2010 to meet the degree requirement is now effectively moot because the RIF was executed in 2010 and the seven (7) months CFSA was offering have long since passed. As a result, the parties' last best offers cannot be arbitrated because neither offer is still on the table. Accordingly, the Board finds that CFSA's good faith I&E obligations have been exhausted and fulfilled and that it is consequently not necessary to advance this case to fact-finding or arbitration.[19] AFSCME's Declaration of Impasse is therefore dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. AFSCME's Declaration of Impasse is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Donald Wasserman and Keith Washington

November 20, 2014

[18] Three (3) times in May 2010, and once in October 2010 with Commissioner Sylvester.
[19] *Id.*

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-I-06, Slip Op. No. 1462, was transmitted via U.S. Mail and e-mail to the following parties on this the 24th day of November, 2014.

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/s/ Sheryl Harrington
PERB

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

REVISED NOTICE OF PUBLIC INTEREST HEARING

FORMAL CASE NO. 1115, APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR APPROVAL OF A REVISED ACCELERATED PIPE REPLACEMENT PROGRAM

To afford the Settling Parties sufficient time to resolve outstanding issues and finalize the settlement agreement, the public interest hearing originally scheduled to be held on December 10, 2014 pursuant to Section 130.11 of the Commission's Rules of Practice and Procedure[1] to consider the settlement agreement that was scheduled to be filed on December 3, 2014 in this proceeding has been cancelled and rescheduled for January 8, 2015 in accordance with Order No. 17728 of the Public Service Commission of the District of Columbia ("Commission") issued on December 8, 2014. Notice of the originally scheduled hearing was published previously in the *D.C. Register*[2] and on the Commission's website. The Commission now hereby gives notice of the rescheduled public interest hearing to be held pursuant to Section 130.11 of the Commission's Rules of Practice and Procedure to consider the settlement agreement scheduled to be filed on or before December 10, 2014 by Washington Gas Light Company ("WGL" or "Company"), the Office of the People's Counsel ("OPC"), and the Apartment and Office Building Association of Metropolitan Washington ("AOBA") (collectively, "Settling Parties"). The public interest hearing will convene Thursday, January 8, 2015, at 10:00 a.m. in the Commission Hearing Room, 1333 H Street, N.W., East Tower, Suite 700, Washington, DC 20005.

BACKGROUND

In WGL's last base rate case,[3] the Company sought, among other things, Commission approval to implement the first five (5) years of a 50-year Accelerated Pipe Replacement Plan ("APRP") and to recover the costs through a surcharge mechanism called the Plant Recovery Adjustment ("PRA") billed to customers on a monthly basis.[4] In the Commission's decision on WGL's rate application, Order No. 17132, issued May 15, 2013, the Commission acknowledged the need for a program to address the aging pipeline infrastructure in the District, but found, based on the

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1 15 DCMR § 130.11 (1992).

2 61 D.C. Reg. 12018 (2014).

3 *Formal Case No. 1093, In the Matter of the Investigation into the Reasonableness of Washington Gas Light Company's Existing Rates and Charges for Gas Service* ("*Formal Case No. 1093"*), Washington Gas Light Company's Request for Approval of a Revised Accelerated Pipe Replacement Plan (Public Version and Confidential Version), filed August 15, 2013 ("WGL's Request"). WGL's Request was filed in *Formal Case No. 1093*, but was incorporated into a new case, *Formal Case No. 1115*, by Order No. 17431, rel. March 31, 2014.

4 *Formal Case No. 1093,* WGL's Application at 4-5. *See also* WGL (A) at 5-7 (Sims); WGL (L) at 3-15 (Buckley); and WGL (G) at 3-18 (Townsend).

record made in that proceeding, that there were problems with WGL's proposed APRP which required the Commission to reject the program (and the PRA) as submitted.[5] The Commission directed the Company to reconsider certain aspects of its risk assessments (including large diameter/elevated pressure pipe), the timeframe of the proposed APRP and several specific questions, and to report back promptly to the Commission, in a filing to be made within three (3) months from the date of the Order, on its revised risk assessments and pipe replacement priorities.[6]

On August 15, 2013, pursuant to Order No. 17132, WGL filed its Revised APRP (also referred to herein as the "Revised Plan") and requested Commission approval to implement the first five (5) years of its 40-year Revised Plan and proposed PRA.[7]

By Order No. 17431, issued on March 31, 2014, the Commission opened a new case, *Formal Case No. 1115*, and in that Order granted WGL's Request for Approval of its Revised APRP subject to the conditions set forth in that Order.[8] The Commission also directed: (1) the Company to respond to the Commission's directives for additional information that were set out in that Order; (2) other parties to file comments to those filings; and (3) Commission Staff to convene a technical conference to allow the parties to discuss WGL's Revised Plan.[9]

On April 30, 2014, WGL filed Responsive Information pursuant to Order No. 17431.[10] The Company followed with two supplemental filings on May 5, 2014.[11] The technical conference was held on May 7, 2014, with a follow-up WebEx session on Optimain on May 29, 2014, and a live presentation on Optimain at the Company's Springfield, Virginia office on June 20, 2014. AOBA and OPC filed its Comments to WGL's responses to Order No. 17431 on May 30, 2014, and on June 17, 2014, respectively.[12]

By Order No. 17602, issued August 21, 2014, the Commission, among other things, granted final approval of WGL's Revised APRP, determined that an evidentiary hearing is necessary to

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5 *Formal Case No. 1093*, Order No. 17132, ¶¶ 249-271, rel. May 15, 2013 ("Order No. 17132").

6 Order No. 17132, ¶ 259.

7 WGL's Request at 2-3.

8 *Formal Case Nos. 1093 and 1115*, Order No. 17431, rel. March 31, 2014.

9 Order No. 17431, ¶¶ 71, 79.

10 *Formal Case No. 1115*, Washington Gas Light Company's Responsive Information Pursuant to Order No. 17431, filed April 30, 2014 ("WGL's Responsive Information").

11 *Formal Case No. 1115*, Washington Gas Light Company letters dated May 5, 2014 addressed to the Commission's Secretary enclosing Rate Schedule 1A, Attachment H and revised Attachments A and G.

12 *Formal Case No. 1115*, Comments of the Apartment and Office Building Association of Metropolitan Washington to the Washington Gas Light Company's Further Revised Accelerated Pipe Replacement Plan, filed May 30, 2014 ("AOBA's May 30, 2014 Comments"). *Formal Case No. 1115*, Comments of the Office of the People's Counsel on the Response of Washington Gas Light Company to PSC Order No. 17431 ("OPC's June 17, 2014 Comments").

consider WGL's requested funding mechanism for the APRP (the "funding mechanism" or "cost recovery" phase of this proceeding), and established a preliminary issues list for the cost recovery proceeding subject to additional relevant issues being proposed by the parties by August 29, 2014.[13] An evidentiary hearing was scheduled to be held November 12-14, 2014.[14]

WGL filed a Motion to Stay the Proceedings on November 5, 2014, alleging that the Settling Parties have reached a settlement in principle on the issues addressed in the case, but that additional time is needed to memorialize the terms and conditions of settlement.[15]

In Order No. 17700, issued on November 7, 2014, the Commission: (1) granted WGL's Motion to Stay the Proceedings to facilitate the parties' time requirements to finalize the details and memorialize the terms and conditions of the settlement in a settlement agreement; (2) cancelled the evidentiary hearing scheduled for November 12-14, 2014 in this proceeding; (3) directed the Settling Parties to file the settlement agreement on or before December 3, 2014; and (4) set December 10, 2014, at 11:30 a.m., as the date of the hearing to determine whether the settlement agreement is in the public interest.[16]

On December 3, 2014, the Settling Parties filed a Joint Motion for Extension of Time to the File Settlement Agreement until December 10, 2014 and to postpone until December 16, 2014 the hearing scheduled to determine whether the settlement agreement is in the public interest.[17] The Commission granted the Joint Motion in Order No. 17728setting the new date for the filing of the settlement agreement as December 10, 2014 and postponing the public interest hearing originally scheduled for December 10, 2014 and rescheduling it for January 8, 2015.[18]

PUBLIC INTEREST HEARING

The purpose of this public interest hearing is to determine if the proposed settlement agreement is in the public interest pursuant to Section 130.11 of the Commission's Rules of Practice and Procedure.[19] During the course of the hearing, the parties that have agreed to settle will present witnesses to testify regarding the proposed settlement agreement and may be questioned by the Commission on whether the settlement agreement is in the public interest.[20] If the settlement

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13 *Formal Case No. 1115*, Order No. 17602, ¶ 116, rel. August 21, 2014.

14 Order No. 17602, Attachment A.

15 *Formal Case No. 1115*, Washington Gas Light Company's Motion to Stay the Proceedings, filed November 5, 2014 ("WGL's Motion to Stay").

16 *Formal Case No. 1115*, Order No. 17700, rel. November 7, 2014.

17 *Formal Case No. 1115*, *Application of Washington Gas Light Company for Approval of a Revised Accelerated Pipe Replacement Program* ("*Formal Case No. 1115*"), Joint Motion for Extension of Time to File Settlement Agreement, filed December 3, 2014 ("Joint Motion for Extension of Time").

18 *Formal Case No. 1115*, Order No. 17728, rel. December 8, 2014.

19 15 DCMR § 130.11 (1992).

20 15 DCMR § 130.12 (1992).

agreement that is submitted to the Commission is not unanimous, any party that does not join in the settlement agreement may be questioned by the Commission. In addition, the Commission may allow cross-examination among the settling and non-settling parties. Interested persons who are not parties to this proceeding and wish to testify at the hearing may do so by notifying the Commission's Secretary in writing at the address or email address listed in the final paragraph of this Notice at least two (2) days prior to the date of the hearing.

The public interest hearing will be streamed live on the Commission's website, www.dcpsc.org, and the video archived at http://www.dcpsc.org/public_meeting/index.asp.

ADDITIONAL INFORMATION

On or after December 10, 2014, copies of the proposed settlement agreement may be obtained by contacting the Office of the Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, DC 20005 or by visiting the Commission's website at www.dcpsc.org. The proposed settlement agreement will be located on the Commission's eDocket system in *Formal Case No. 1115* and can be obtained at http://www.dcpsc.org/edocket/docketsheets_pdf_FS.asp?caseno=FC1105&docketno=37&flag=D&show_result=Y.

Interested persons who are not parties to this proceeding may submit written comments or statements regarding the proposed Settlement Agreement to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, NW, Suite 200, West Tower, Washington D.C. 20005 or by email at psc-commissionsecretary@dc.gov. on or before January 8, 2015.

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 January 15, 2015.

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 December 19, 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: January 15, 2015**
Recommended for appointment as a DC Notaries Public **Page 2**

Akello	Stella O.	The GW Medical Faculty Associates 2300 M Street, NW, Suite 303	20037
Archie	Bobby R.	The UPS Store 1220 L Street, NW, Suite 100	20005
Argueta	Evelin M.	DC Office of Human Rights 441 4th Street, NW, 570N	20001
Ash	Antoinette K.	Agriculture Federal Credit Union 1400 Independence Avenue, SW, Room 1210	20250
Barnes	Malcolm Lewis	Minority Business Resource Institute 4715 Sargent Road, NE	20017
Beach	Patricia	Department of Housing and Urban Development 451 7th Street, SW, Room 6222	20410
Beattie	Cynthia C.	Old Dominion Settlements, Inc. t/a Key Title 5225 Wisconsin Avenue, NW	20015
Burkart	William	Mid-Atlantic Settlement Services 3000 K Street, NW, Suite 101	20007
Campbell	Cynthia	Classic Concierge 1301 K Street, NW	20005
Campbell	Margaret M.	Hogan Lovells, LLP 555 13th Street, NW	20004
Cannon	Susannah	U.S. House of Representatives B-227 Longworth House Office Building	20515
Chavez	Maria P.	Covington & Burling LLP One City Center, 850 Tenth Street, NW	20001
Clark, N.P.	Patricia L.	Metropolitan Assessment and Renewal Centers, LLC 3120 Georgia Avenue, NW	20010
Clegg	Nicole	Urban Alliance 2030 O Street, NW	20009

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Recommended for appointment as a DC Notaries Public **Page 3**

Coleman	Robin L.	Alderson Court Reporting, Inc. 1155 Connecticut Avenue, NW, Suite 200	20036
Colucci	Abigail	Compass Lexecon, an FTI Consulting Company 1101 K Street, NW, 8th Floor	20005
Dawson	Lu Anne	Feder Reporting 810 Capitol Square Place, SW	20024
Deuberry	Jamai A.	Office of the State Superintendent of Education (OSSE) 810 First Street, NE	20002
Donnelly	Virginia	DC Housing Authority 1133 North Capitol Street, NE	20002
Edwards	Patricia A.	Merrill Corporation 1325 G Street, NW, Suite 200	20005
Ellis	Gregory	Office of the State Superintendent of Education (OSSE) 810 First Street, NE	20002
Evans	Constance M.	Asbury Dwellings Apartments, Inc. 1616 Marion Street, NW	20001
Fay	Jennifer	American Crossroads 1615 L Street, NW	20036
Fears	Jewell	Northwestern Mutual - Kurt Rupprecht 1801 K Street, NW, Suite 210	20006
Ferrufino	Claudia	Media DC 1150 17th Street, NW, Suite 505	20036
Fields	George Anthony	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Flessel	Julia	Zamani & Scott, LLP 2121 K Street, NW, Suite 900	20037

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Recommended for appointment as a DC Notaries Public **Page 4**

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Friedman	Leah A.	McKenzie Construction and Site Development, LLC 28 Florida Avenue, NE	20002
Gathinji	Mwangi	Community Three Development, LLC 1326 H Street, NE, 2nd Floor	20002
Grand-Pierre	Yasmine	Bank of America 201 Pennsylvania Avenue, SE	20003
Green	Delores M.	Delores M. Green, Court Reporter 229 S Street, NE	20002
Hayes	Maisha	Office of the State Superintendent of Education (OSSE) 810 First Street, NE	20002
Jackson	Angela L.	The Ford Law Firm 601 Pennsylvania Avenue, NW, Suite 900	20004
Jackson	Crystal Bianca	Self 945 Longfellow Street, NW, #1	20011
Jackson	Samone	E.L. Haynes Public Charter School 4501 Kansas Avenue, NW	20011
Jambolla	Tesfaye N.	PNC BANK, Capitol Hill Branch 650 Pennsylvania Avenue, SE	20003
Jaques	Dawn A.	Olender Reporting 1100 Connecticut Avenue, NW	20036
Kelley	Elizabeth	Enlightened, Inc. 1100 15th street, NW, Suite 300	20005
Kelley	Kevin	U.S. House of Representatives B-227 Longworth House Office Building	20515
Khan	Zahra	Wells Fargo Bank, N.A. 1804 Adams Mill Road, NW	20009

D.C. Office of the Secretary **Effective: January 15, 2015**
Recommended for appointment as a DC Notaries Public **Page 5**

Lewis	David	Self 3503 15th Street, NE	20017
Lewis	Michael	American Bridge 21st Century 455 Massachusetts Avenue, NW, Suite 280	20001
Malcean	Cynthia J.	Citibank, NA 1101 Pennsylvania Avenue, NW	20004
Martin	Jermain	Wells Fargo Bank 600 Maryland Avenue, SW	20024
Mathias III	John Allen	Futures Group 1331 Pennsylvania Avenue, NW, Suite 600	20004
Matthews	Joshua	Stone Soup Inc. / Busboys and Poets 1347 T Street, NW	20009
Maurand	Jordan D.	Treliant Risk Advisors 2300 N Street, NW	20037
Mithika	Catherine	Wells Fargo Bank 215 Pennsylvania Avenue, SE	20020
Moore	Denise P.	Venable LLP 575 7th Street, NW	20004
Nance	Shawn A.	Community Bridge, Inc. 1 Scott Circle, NW, Suite 820	20036
Niles	Burgundy L.	Law Office of Christina Forbes 1629 K Street, NW, Suite 323	20006
Niravanh	La Tonya A.	Defense Intelligence Agency 200 MacDill Boulevard, SW	20340
Notto	Julie	Krooth & Altman, LLP 1850 M Street, NW, Suite 400	20036
Onyekachi	Onyw	UPS Store 3220 N Street, NW	20007

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Outlaw	Willie	Liberty Tax Service 5415 Georgia Avenue, NW	20011
Patterson	Barbara J.	Self (Dual) 422 Marietta Place, NW	20011
Perez	Leslie B.	Allstate Insurance Company; Owens & Owens II, Inc. 1730 Rhode Island Avenue, NW	20036
Phillips	Vincent M.	Tax Express 1313 Pennsylvania Avenue, SE	20003
Price	Sandra C.	Barnes & Thornburg LLP 1717 Pennsylvania Avenue, NW	20006
Rego	Mindy	John I. Haas, Inc. 5185 MacArthur Boulevard, NW, Suite 300	20016
Roeser	Zeke Jeffrey	Roeser & Whitlock, LLP 3000 Connecticut Avenue, NW, Suite 100	20008
Rorie	Nicole E.	Bank of America 3821 Minnesota Avenue, NE	20019
Rull	Dorothy A.	Office of the Clerk U.S. House of Representatives	20515
Sansbury	Brenda	Department of General Services 1900 Massachusetts Avenue, SE	20003
Saxon	Sheila	Steptoe & Johnson, LLP 1330 Connecticut Avenue, NW	20036
Schabacker	Catherine	Dykema Gossett, PLLC 1300 I Street, NW, Suite 300 West	20005
Setty	Jason M.	Stewart Title Group, LLC 11 Dupont Circle, NW, Suite 750	20036
Spearman	Vernon	ILL Do It, LLC 126 S Street, NW	20001

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Steward	Shannon C.	Genentech 1399 New York Avenue, NW, Suite 300	20005
Taylor	Kim N.	Department of Commerce, Office of the General Counsel, Contract Law 1401 Constitution Avenue, NW	20230
Thibodeaux	Sonia	TCA TrustCorp America 5301 Wisconsin Avenue, NW, Suite 450	20015
Thiessen Jr.	Gary	U.S. House of Representatives B-227 Longworth House Office Building	20515
Tucker	Kenneth	TD Bank 801 17th Street, NW	20006
Tupino	Christine	Skadden Arps Slate Meagher & Flom, LLP 1440 New York Avenue, NW	20005
Waldron	DeeAnda	Defense Intelligence Agency 200 MacDill Boulevard, SW	20340
Wallace	Sandra L.	Community Academy Public Charter School 1351 Nicholson Street, NW	20011
Whitbeck	Caroline Leigh	Woodley & McGillivary, LLP 1101 Vermont Avenue, NW, Suite 1000	20005
Williams	Bruce T.	Mifam LLC 826 Division Avenue, NE	20019
Williams	Marva M.	Bank of America 1801 K Street, NW	20006
Williams	Tier Therese	Defense Intelligence Agency 200 MacDill Boulevard, SW	20340
Winston	Bertha D.	Law Offices of Robert Bunn 910 17th Street, NW, Suite 800	20006
Woodall	Rikki J.	Stewart Title Group, LLC 11 Dupont Circle, NW, Suite 750	20036

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Woods	Albany Louise	Entrusted Development 1231-B Good Hope Road, SE, Suite 202	20020
Wright	Andrea	Knollwood 6200 Oregon Avenue, NW	20015
Yancey	Robert W.	MARC LLC 3120 Georgia Avenue, NW	20010

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE

REQUESTS FOR WAIVER OF SUBCONTRACTING REQUIREMENT

In accordance with *The Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014, L20-0108, D.C. Code 2-218.01 et. Seq ("the Act")*, Notice is hereby given that the following agencies have requested waivers from the 35% subcontracting requirement of the Act for the below identified solicitations/contracts with values estimated over $250,000:

Agency Acronym	Solicitation/ Contract	Description	Contracting Officer/Spec	DSLBD Contact
OCFO	CFOPD-15-C-008	Lexis Nexis TRIS	drakus.wiggins@dc.gov	
DBH	RM-14-RFP-270-BY4-DJW	MENTAL HEALTH PROGRAM IN PRIMARY CARE SETTINGS	denise.wells@dc.gov	
DPW	Doc185897	16CY Diesel Refuse Truck	michael.spriggs@dc.gov	

As outlined in D.C. Code §2-218.51, as amended, draft approvals are to be posted for public comment on DSLBD's website: www.dslbd.dc.gov for five (5) days in order to facilitate feedback and input from the business community. The five day period begins the day after DSLBD posts its draft letter to its website. The five days includes week day and the weekend. Following the five (5) day posting period, DSLBD will consider any feedback received prior to issuing a final determination on whether to grant the waiver request.

Pursuant to D.C. Code 2-218.51, the subcontracting requirements of D.C. Code 2-218.46, may only be waived if there is insufficient market capacity for the goods or services that comprise the project and such lack of capacity leaves the contractor commercially incapable of achieving the subcontracting requirements at a project level.

More information and links to the above waiver requests can be found on DSLBDs website: www.dslbd.dc.gov

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

REVISED NOTICE OF FUNDING AVAILABILITY (NOFA)

CLEAN TEAM GRANTS

The Department of Small and Local Business Development (DSLBD) is reopening the application period for applications from eligible applicants to manage a **DC Clean Team Program** ("the Program") in two service areas (listed below). **The submission deadline is January 5, 2015, 1:00 p.m.**

Through this grant, DSLBD will fund clean teams, which will: 1) Improve commercial district appearance to help increase foot traffic, and consequently, opportunity for customer sales; 2) Provide jobs for DC residents; 3) Reduce litter, graffiti, and posters which contributes to the perception of an unsafe commercial area; 4) Maintain a healthy tree canopy and landscape; 5) Support Sustainable DC goals by recycling, mulching street trees, using eco-friendly supplies, and reducing stormwater pollution generated by DC's commercial districts; and 6) Provide jobs for DC residents.

Eligible applicants are DC Business Improvement District management organizations which are incorporated in the District of Columbia and have demonstrated capacity with: a) providing clean team services or related services to commercial districts or public spaces; b) providing job-training services to its employees; and c) providing social support services to its Clean Team employees.

DSLBD will **award** between one and two grants to provide Clean Team services for each of the following areas. Each service area has $100,000 allocated to it.

- Wisconsin Avenue (Ward 3)
- New York Avenue (Ward 5)

The **grant performance period** to deliver clean team services is February 9, 2015 through September 30, 2015. Grants may be renewed for a second performance period of October 1, 2015 through September 30, 2016 and for an additional $100,000 per service area.

Application Process: Interested applicants must complete an online application (RFA Part 2, see below) and submit it on or before **Monday, January 5, 2015 at 1:00 p.m.** Applicants submitting incomplete applications will be notified by January 7, 2015 and will have two business days to upload missing information. Corrected applications are due on January 9 2015 at 1 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.**

The **Request for Application** (RFA) comprises two parts.

1. **RFA Part I, Program Guidelines and Application Instructions** document, which includes: a detailed description of clean team services; service area boundaries; applicant eligibility requirements; and selection criteria. Part 1 of the RFA is posted at

www.dslbd.dc.gov (click on the *Our Programs* tab and then *Solicitations and Opportunities* on the left navigation column).

2. **RFA Part II** which is **the Online Form** through which an Applicant submits application information. The online application will be live **Monday, December 15, 2014**. To access the online application form, an organization must complete and submit an online **Expression of Interest** (Registration) form at https://octo.quickbase.com/db/bi5n5mq5b. DSLBD will activate their online access within two business days and notify them via email.

Selection Criteria for applications will include: a) Applicant Organization's demonstrated capacity to provide clean team or related services, and managing grant funds; b) Proposed service delivery plan for basic clean team services; and, c) Proposed service delivery plan for additional clean team services. Applicants should reference RFA Part 1 for detailed description of selection criteria.

Selection Process: DSLBD will select grant recipients through a competitive application process that will assess the Applicant's eligibility, experience, capacity, service delivery plan, and, budget. Applicants may apply for one or more service areas by submitting. DSLBD will determine grant award selection and notify all applicants of their status via email on or before January 23, 2015.

Funding for this award was established by *DC Act 20-377 ("Fiscal Year 2015 Budget Support Emergency Act of 2014"), Title VI, Subtitle I ("Competitive Grants"), Section 6097*. Funding is contingent on continued funding from the grantor. The RFA does not commit the Agency to make an award.

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.

All applicants must attest to executing DSLBD grant agreement as issued (sample document will be provided in online application) and to starting services on February 9, 2015.

For more information, contact Camille Nixon at the Department of Small and Local Business Development at (202) 727-3900 or camille.nixon@dc.gov.

THURGOOD MARSHALL ACADEMY PUBLIC CHARTER HIGH SCHOOL

REQUEST FOR PROPOSALS

Caterer for Annual Gala Fund-Raising Event

Thurgood Marshall Academy—a nonprofit, college-preparatory, public charter high school—seeks a caterer for its Shining Star Gala 2015 event. This annual event raises funds that support the school's rigorous curriculum and youth development services, as well as honoring supporters and raising public awareness about the school's work.

Ideal caterers will be able to provide, but are not limited to, the following services:

- Available on dates between Thursday, April 30, 2015 – Thursday, May 7th, 2015
- Ability to host 300-400 guests for an event with at least two (2) bar stations and food stations throughout a two-story space, with heavy hors d'oeuvres both passed and at food stations—in bid (a) propose number of food stations and (b) provide per-person cost per meal
- Elegant presentation and high-end menu options—provide specific details in bid
- Provide alternative and comparable menu options for guests with dietary restrictions, specifically vegetarian and vegan options—provide specific details in bid
- Must provide tables, linens, chairs, utensils, glassware, china, serving/kitchen equipment as appropriate, tables/linens for display and other decorative elements
- Must provide appropriate number of staff to accommodate attendance: servers, cooks/kitchen attendants, and bartenders—detail staffing commitments and costs in bid
- Ability to set up four hours prior to event and clean up that evening
- Ability to assist with floral arrangements, lighting, and valet as determined necessary by Thurgood Marshall Academy
- Must hold liquor license, any other required licenses, and insurance as set by industry standards and DC law
- Experience with school fundraising events preferred
- Flexibility and capacity to negotiate further to work with school to finalize plans

For further information regarding this RFP contact **Raven Bradburn, 202-563-6862 x105 or rbradburn@tmapchs.org.** Further information about Thurgood Marshall Academy—including our nondiscrimination policy—may be found at www.thurgoodmarshallacademy.org.

By submitting a bid, every bidder affirms that neither the bidder nor its subcontractors (if any) are an excluded party by or disbarred from doing business with/receiving funds from either the US federal government or the government of the District of Columbia. Bidders also agree to the provisions of Thurgood Marshall Academy's General Conditions Statement, available on the school's Web site under the About tab, Employment Opportunities page (http://thurgoodmarshallacademy.org/about/employment-opportunities/).
Any changes regarding the RFP process will be posted exclusively on the Employment Opportunities page of the school's Web site (found at the URL above).

Submit proposals—including all of the following—

(a) responses to bullet points listed above
(b) signed contract with effective date to be filled in by Thurgood Marshall Academy
(c) fee proposal including itemized costs, any discounts offered, and an all-inclusive total proposal with any add/deduct alternates clearly identified
(d) names and contact information for three references
(e) contact information including Web site address

Submissions must not exceed 4MB per email.

Bids are due no later than **Monday, January 5, 2015,** via e-mail to **rbradburn@tmapchs.org**.

WASHINGTON LATIN PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

The Washington Latin Public Charter School is issuing a request for proposals, which includes references, from qualified vendors for tutoring services for a student with an individualized education program.

Questions and proposals may be e-mailed to (kroberts@latinpcs.org and bpaul@latinpcs.org) with the "Tutoring Services" as the subject line. Deadline for submissions is **12 PM Friday, December 19, 2014**. Appointments for presentations will be scheduled at the discretion of the school office after receipt of proposals only. No phone calls please.

E-mail is the preferred method for responding but you can also mail, provided arrival is by the deadline, proposals and supporting documents to the following address:

Washington Latin Public Charter School
Attn: Finance Office
5200 2nd Street NW
Washington, DC 20011

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 18031-C of West End Citizens Association, pursuant to 11 DCMR §§ 3100 and 3101, from a November 4, 2009 decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Certificate of Occupancy No. C01000323, for a grocery store in the R-5-E District at premises 2140 F Street, N.W. (Square 81, Lot 811).

BOARD'S HEARING DATE:	February 23, 2010
BOARD'S DECISION DATE:	February 23, 2010
DATE OF FINAL ORDER:	August 24, 2010
COURT OF APPEALS DECISION REMANDING TO BOARD:	August 16, 2012, amended December 19, 2012
BOARD'S PROCEDURAL ORDER ON REMAND:	July 1, 2013
BOARD'S DECISION AS TO SCOPE OF HEARING:	October 8, 2013
BOARD'S LIMITED HEARING ON REMAND:	December 3, 2013
BOARD'S DECISION ON REMAND:	February 11, 2014

PROPOSED DECISION AND ORDER ON REMAND[1]

The record in this case was remanded to the Board of Zoning Adjustment ("Board" or "BZA") by the District of Columbia Court of Appeals for it to consider whether its authority extended to the consideration of the timeliness of the appeal pursuant to 11 DCMR § 3112.2 and to hear and decide claims of estoppel and laches raised by Foggy Bottom Grocery, LLC ("FoBoGro"), the lessee of the subject property. The timeliness issue was raised for the first time by the court.

At a Decision Meeting held on October 8, 2013, the Board concluded the timeliness rule was not jurisdictional and that the Department of Consumer and Regulatory Affairs and FoBoGro had

[1] The Memorandum, Opinion, and Judgment that remanded this case was amended by an Order dated December 19, 2012. That Order noted that this was a record remand and therefore the court retained jurisdiction over the case. Since the Board is without jurisdiction, this decision and order is being issued as a proposed action of the Board. As instructed by the Order, the Board will return the augmented record and take such action as the court thereafter directs.

forfeited their ability to seek dismissal upon that ground having failed to raise the issue in the original proceeding before the Board. Following a limited hearing on the *laches* and *estoppel* claims, the Board deliberated on February 11, 2014 and determined the FoBoGro had failed to prove *laches* but did prove the elements of *estoppel*, thereby granting the motion to dismiss. The facts and legal conclusions that justify these determinations follow.

FINDINGS OF FACT

Procedural History

The Board Proceedings

1. Appeal No. 18031 was filed with the Board of Zoning Adjustment by the West End Citizens Association ("WECA") on November 10, 2009, challenging the November 4, 2009 issuance of Certificate of Occupancy ("C of O") No. CO1000323 ("the 2009 C of O") issued to Foggy Bottom Grocery, LLC ("FoBoGro").

2. The District Department of Consumer and Regulatory Affairs ("DCRA") issued the 2009 C of O, thereby permitting the use of the premises at 2140 F Street, N.W. (the "subject property") for a "Retail Grocery Store" with an "accessory prepared food shop".

3. WECA claimed that the 2009 C of O impermissibly expanded the existing one-story nonconforming grocery use by permitting an accessory prepared food shop, and by authorizing all three floors of the building for the grocery store use.

4. FoBoGro filed a motion to dismiss that, among other things, claimed that the appeal was barred by the equitable doctrines of *estoppel* and *laches*.

5. FoBoGro never argued in its motion, or otherwise, that the appeal was filed beyond the time limits set forth at 11 DCMR § 3112.2(a) (§ 3112 or "the timeliness rule").[2]

6. Therefore FoBoGro never contended that WECA's appeal was untimely as a matter of law pursuant to § 3112.2, but rather as a matter of equity.

7. DCRA did not request the Board to dismiss the appeal as untimely as a matter of law or equity.

8. The Board determined that it would not hear testimony on the equitable defenses unless and until it found that the appeal had merit. Because the Board ultimately found no merit to WECA's claims, it denied the appeal and made no findings regarding the equitable defenses.

[2] This provision states, in part: "An appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier."

9. The Board issued an Opinion and Order on August 10, 2010 (the "Board's 2010 Order"), denying the appeal.

The Court of Appeals Proceedings

10. WECA petitioned the Court of Appeals to review the Board's 2010 Order.

11. The court issued a Memorandum Opinion and Judgment ("MOJ") that found no error in the Board's determination that the incidental sale of prepared food fell within a grocery store use, but reversed the Board's determination that the grocery store use could extend beyond the first floor.

12. The MOJ also remanded the case to the Board for it to consider whether the appeal was timely as a matter of law. The relevant portion of the MOJ stated:

> The BZA found it unnecessary to reach FoBoGro's contention that WECA's appeal of its C of 0 was untimely as a matter of law, which would be an alternative basis for the BZA's denial of the appeal. The BZA will have to address that contention on remand, as it potentially has merit.

13. The court thought such a contention might have potential merit because an earlier Certificate of Occupancy issued in 2008 also appeared to permit all three floors of the building to be used as a grocery store. If true, that would have been the first and only relevant iteration of the zoning decision complained of and therefore WECA would have had 60 days from when it knew or should have known of the decision to file an appeal. The court suggested that WECA knew of the decision in September 2009, but waited until November to file the appeal.

14. WECA then filed a Petition for Rehearing arguing that no remand was needed because the Board had found the appeal to be timely.

15. In response, the Board indicated that FoBoGro had never contended that the appeal was untimely as a matter of law and that the Board had made no finding as to the relevance of the 2008 C of O to the timeliness of the appeal. However, because FoBoGro had raised the equitable defenses of *estoppel* and *laches*, remand was appropriate for the Board to now hear and decide those issues.

16. In an order filed December 19, 2012, the Court of Appeals apparently accepted the Board's position and amended the MOJ to remand the record to the Board for it to determine: (1) whether the Board's authority extends to the belated consideration of whether WECA's appeal was timely as a matter of law; and; (2) whether WECA's appeal was barred by the equitable defenses of *laches* and *estoppel*.

The Instant Remand Proceedings

17. In response to the amended MOJ, the Board issued a "Procedural Order on Remand" on July 1, 2013. (Exhibit 30.)

18. The Board determined to resolve the jurisdictional question as a preliminary matter and directed the parties to brief the following issue:

> Does the Board have the authority as part of the proceeding on remand to consider whether WECA's appeal was timely as a matter of law when the issue was not raised by any party or the Board during the earlier proceeding but was identified for the first time in these proceedings by the Court of Appeals?

19. The Board received briefs from the parties addressing this issue: DCRA (Exhibit 32), FoBoGro (Exhibit 33), and WECA (Exhibit 34).[3]

20. DCRA and FoBoGro asserted that the Board had the authority to consider the timeliness issue because the appeal filing deadline stated in § 3112 is mandatory and jurisdictional, and therefore may be addressed at any time.

21. WECA argued that, according to recent cases decided by the United States Supreme Court and the District of Columbia Court of Appeals, the timeliness rule is not jurisdictional, but merely a "claim-processing" rule. WECA further argued that because compliance with the rule was not raised as a defense to the appeal, its application was "forfeited" by the parties defending.

22. At a Decision Meeting held on October 8, 2013, the Board deliberated on this question and found that the § 3112.2 is a claim processing rule and is not jurisdictional. The Board also concluded that FoBoGro and DCRA had forfeited the issue by not raising it in the original proceedings. Therefore, the Board would not consider whether the appeal was untimely as a matter of law.

23. The Board then set the remanded appeal for a limited hearing on the issues of *laches* and *estoppel* and requested additional briefs on these issues from the parties.

24. At its decision meeting held February 11, 2014, the Board concluded that FoBoGro had not proven *laches*, but had established the elements of *estoppel*.

The Merits of the Laches and Estoppel Claims

25. The subject property is owned by The George Washington University ("GWU") and is located at address 2140 F Street, N.W., in Square 81, Lot 811, in an R-5-E zone district.

26. The building on the subject property has three stories, consisting of a basement, a first or main floor, and a second floor.

[3] The legal issues raised will be discussed more fully in the "Conclusions of Law" section of this Order.

27. Some portion of the structure has housed a retail grocery store since 1946.

28. At the time of the adoption of the present version of the Zoning Regulations on May 12, 1958, the property became zoned R-5-D. All R-5-D properties were rezoned into new R-5-E zones by the Zoning Commission on November 13, 1992 as a result of the publication of Zoning Commission Order No. 721.

29. A grocery store use was not permitted in an R-5-D District as of May 12, 1958.

30. As a consequence of the rezoning, the lawfully established grocery store use became a nonconforming use. (See, Definition of "Nonconforming Use" at 11 DCMR § 199.1.)

31. A nonconforming use may not be extended to portions of a structure not devoted to that nonconforming use at the time of the enactment of, or amendment to, Title 11 that rendered it nonconforming. (11 DCMR § 2002.3.)

32. The earliest extant C of O, issued prior to May 7, 1958 authorized the first floor of the building for use as a grocery store. Neither the basement nor the second floor was mentioned on the C of O.

33. The District of Columbia Court of Appeals held that the nonconforming grocery use was limited to the first floor and that the 2009 Certificate of Occupancy allowed for an impressible expansion of the conforming use. This determination would ordinarily require the Board to reverse the Zoning Administrator.

34. FoBoGro argues that the Board should nevertheless dismiss the appeal based upon the equitable principles of *laches* and *estoppel*.

The Laches Claim

35. On August 21, 2008, the DCRA Zoning Administrator (the "ZA") issued a C of O (the 2008 C of O) to FoBoGro to for the grocery store at the property. (Exhibit 9, Attachment A.)

36. Although the 2008 C of O did not expressly indicate how many floors of the building would be devoted to the grocery store use, it specified the square footage that the store could occupy. That square footage equaled the area occupied by all three floors in the building.

37. The 2008 C of O was unknown to WECA until almost a year later.[4]

38. DCRA's representative stated that DCRA notifies the Advisory Neighborhood Commissions ("ANCs") on a weekly basis regarding all newly issued C of Os and

[4] FoBoGro's owner testified that he posted the 2008 C of O at the property. However, this claim was not substantiated. However, even if the posting was substantiated, there is no evidence that WECA had knowledge of it.

building permits. However, there was no evidence that WECA received such notice regarding the 2008 C of O through any ANC.

39. Although FoBoGro's owner met with WECA's representative in February 2009, the 2008 C of O was not provided or shown to WECA at that time.

40. On August 16, 2009, DCRA issued a building permit to FoBoGro authorizing renovations to an "existing townhouse" (the "2009 building permit")[5]. (Exhibit 9, Attachment C.)

41. The 2009 building permit did not indicate an existing or proposed use.

42. There were no publicly displayed activities at the building between August, 2008 and July or August of 2009.

43. Construction at the property did not begin until late September or early October of 2009.

44. On or about late July of 2009, WECA first learned of the existence of the 2008 C of O when FoBoGro applied to the District for the transfer of an alcohol license, and a hearing was set with the District's Alcoholic Beverage Control Board (the "ABC Board").[6]

45. On August 31, 2009, WECA copied the ZA on a letter to the ABC Board, in which it protested FoBoGro's application and specifically complained of the use of all three floors of the building for a grocery store.

46. Starting around September 2009, WECA began contacting the ZA and urging him to revoke the 2008 C of O. WECA complained, among other things, that the C of O improperly expanded a nonconforming use by allowing the grocery use on all three floors.

47. On October 14, 2009, the ZA revoked the 2008 C of O, but not because FoBoGro expanded beyond the first floor. Instead, the revocation was based upon the fact that the C of O erroneously permitted a "sandwich shop" use in addition to the grocery store use.

48. A new C of O was issued on November 4, 2009 (the "2009 C of O"). The 2009 C of O permitted FoBoGro to operate a retail grocery store with an accessory prepared food shop at the subject property, and specifically noted that the grocery store use was authorized to occupy all three floors of the building.

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[5] The parties dispute whether these renovations were exterior, interior, or a combination of both. However, this distinction is not critical. What is critical is whether the permit authorized construction for a building-wide grocery store. As stated, the permit did not mention a use and referred to the property as an existing townhouse.

[6] Barbara Khalow, who testified on behalf of WECA, stated that a placard posted at the property advertising the ABC Board application induced WECA to do further research. (Tr. December 3, 2013.)

49. On November 10, 2009, WECA filed an appeal with the BZA challenging the issuance of the 2009 C of O.

Estoppel Claim

50. Before FoBoGro purchased the grocery business, the previous owner used the main floor of the building for display and sales, the basement for storage and food preparation, and the second floor for more inventory storage, as well as for the business operation of the grocery store operation, which led FoBoGro to believe that the use of all three floors was lawful.

51. This belief was confirmed by DCRA's issuance of the 2008 C of O.

52. While specific floors were not mentioned, the 2008 C of O obtained by FoBoGro permitted the grocery store use on "1,835 square feet" of the building, a figure equivalent the entire floor area of the building.

53. The Board concludes that FoBoGro reasonably believed the 2008 C of O authorized the continuation of the grocery store use on all three floors of the building.

54. FoBoGro relied on the 2008 C of O to its detriment by taking a variety of actions; specifically:

    a. Purchasing the grocery store business from Mesco Inc.;

    b. Signing a 15 year lease with GWU, the owner of the building;

    c. Entering into contracts for architectural and engineering plans and construction;

    d. Allocating over $1,000,000.00 towards renovations, expenses and business operations, and expending over $500,000.00 in renovations alone;

    e. Hiring employees for the grocery store; and

    f. Entering into contracts with distributors for grocery inventory.

(Exhibits 9 and 40.)

CONCLUSIONS OF LAW

The Board is authorized by § 8 of the Zoning Act to "hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal" made by any administrative officer in the administration or enforcement of the Zoning Regulations. (D.C. Official Code § 6-641.07(g)(1) (2012 Repl.). *See also* 11 DCMR § 3100.2.) Appeals to the Board of Zoning Adjustment "may be taken by any person aggrieved, or organization authorized to represent that person,…affected by any decision of an administrative officer…granting or withholding a certificate of occupancy…based in whole or part upon any

zoning regulations or map" adopted pursuant to the Zoning Act. (D.C. Official Code § 6-641.07(f) (20012 Repl.).)

Preliminary matter – Timeliness issue

As noted, the original MOJ first remanded the record for the Board to determine whether this appeal was filed within the timeframe established by 11 DCMR § 3112.2, believing that the issue had been raised by FoBoGro. After being advised by the Board that FoBoGro's timeliness assertion was based upon the equitable defense of *laches*, the Court issued an order amending the MOJ to allow the Board to hear and decide FoBoGro's equitable defenses and left "it for the BZA to consider whether its authority extends to the belated consideration of whether WECA's appeal was timely as a matter of law."

In response to the Board's requests for briefs on the authority issue, DCRA and FoBoGro contended that the Board retained the authority to hear the timeliness issue because compliance with § 3112.2 was jurisdictional in nature and can be raised at any time. WECA claimed that the rule was a claims processing rule, which the BZA forfeited by purportedly consenting to hold a hearing on the appeal and the parties forfeited by not raising the issue below.

For the reasons stated below, the Board agrees with WECA that § 3112.2 is a claims processing rules, but disagrees that the mere scheduling of a hearing on appeal deprives the Board from hearing and granting motions to dismiss based on that subsection or from raising the issue on its own motion. Nevertheless, the Board concludes that DCRA and FoBoGro forfeited their right to add the defense at this late date and therefore the issue will not be considered.

Certainly DCRA and FoBoGro are correct that the Court of Appeals had consistently held that if an appeal is not timely filed, the Board was without power to consider it. *Economides v. District of Columbia Bd. of Zoning Adjustment,* 954 A.2d 427 (D.C. 2008); *Waste Mgmt. of Md., Inc. v. District of Columbia Bd. of Zoning Adjustment,* 775 A.2d 1090 (D.C. 2001); *Mendelson v. District of Columbia Bd. of Zoning Adjustment,* 645 A.2d 1090 (D.C. 1994).

However, as WECA correctly noted, in 2009 a division of the Court of Appeals issued *Smith v. US,* 984 A.2d 196 (2009), which recognized that a court filing deadline could either be a claim processing rule or jurisdictional. The Court adopted the distinction made by the United States Supreme Court in *Bowles v. Russell,* 551 U.S. 205 (2007). As explained in *Smith:*

> There the Court stated that "claim-processing" rules are "court-promulgated rules," "adopted by the Court for the orderly transaction of its business." 551 U.S. at 211, 127 S.Ct. 2360. Those kinds of rules are "not jurisdictional and can be relaxed by the Court in the exercise of its discretion...." *Id*. at 211, 212, 127 S.Ct. 2360 (quoting *Schacht v. United States*, 398 U.S. 58, 64, 90 S.Ct. 1555, 26 L.Ed.2d 44 (1970)). By contrast, "jurisdictional" rules are those rules enacted by Congress, meant to be strictly imposed limits on the cases the courts may hear. *Bowles*, 551 U.S. at 212, 127 S.Ct. 2360.

Smith v. United States, 984 A.2d 196, 200 (D.C. 2009).

Applying these principles to District law, the Court of Appeals in *Smith* held that the Superior Court's rule requiring that motions to reduce sentences be filed within 120 days was a claim processing rule. Therefore, the United States' failure to object to such a late filing forfeited its right to later challenge the reduction granted. More recently, the Court of Appeals extended this principle to quasi-judicial administrative bodies, such as the BZA, and held that the Water and Sewer Authority's ("WASA") rule requiring that challenges to water delinquency be filed in 15 days was a claim processing rule because it was not adopted by the Council. *See, Gatewood v. District of Columbia Water and Sewer Auth.* 82 A.3d 41 (2013).

Applying these principles to § 3112.2, the Board did not adopt the rule, and therefore it is not presumptively a claim processing rule. However, the body that adopted it – the Zoning Commission – has no authority to define the Board's subject matter jurisdiction. Rather, that jurisdiction was created by Congress when it adopted § 8 of the Zoning Act of 1938 (D.C. Official Code § 641.07). Since the Zoning Commission cannot add to or reduce the Board's jurisdiction, § 3112.2 cannot be jurisdictional in nature.

Because § 3122.2 is a claims processing rule, WECA claims that that DCRA and FoBoGro forfeited their ability to invoke the rule because they did not raise it in the original proceedings and the Board agrees. The Court of Appeals has stated that "only under 'exceptional circumstances,' *Jewell v. District of Columbia Police and Firefighters Ret. and Relief Bd.*, 738 A.2d 1228, 1231 (D.C.1999), where 'manifest injustice' would otherwise result, *Goodman v. District Columbia Rental Hous. Comm'n*, 573 A.2d 1293, 1301 (D.C.1990), will the court consider claims that were not presented to the agency." *Sims v. D.C.*, 933 A.2d 305, 309-10 (D.C. 2007).

Based upon this standard, the Board concludes that FoBoGro and DCRA forfeited their right to invoke § 3112.2 before the Court of Appeals and the Board finds no justification to allow this remand to serve as a vehicle to make a claim that could not have been appealed. Therefore, the Board will not consider whether this appeal is untimely as a matter of law.[7]

The Merits

FoBoGro did not establish *laches*

The Court of Appeals has consistently recognized the availability of *laches* in zoning appeals. *See, Sisson v. District of Columbia Bd. of Zoning Adjustment*, 805 A.2d 964, 972 (D.C. 2002*). Kuri Bros., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 891 A. 2d 241, 248 (D.C 2006); *Goto v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 917 (D.C. 1980).

[7] Because of this ruling, the Board will not discuss WECA's alternative argument that the Board somehow waived its right to dismiss the appeal pursuant to § 3112.2, but notes that WECA's two premises -- that the Board was akin to an enforcement entity that consented to an untimely requested hearing and that it previously found the appeal timely notwithstanding the issuance of the 2008 C of O -- are erroneous.

However, *laches* is rarely applied in the zoning context except in the clearest and most convincing circumstances. *Sisson,* 805 A.2d at 971-972. To determine the validity of a *laches* defense, the Board must look at the entire course of events. *Laches* will not provide a valid defense, unless two tests are met: *Laches* will bar a party's claim if the party has been prejudiced by the delay and that delay was unreasonable. *Id*.

FoBoGro did not carry its burden of establishing that WECA unreasonably delayed in bringing its appeal. There is no doubt that WECA appealed from the 2009 C of O – not the 2008 C of O – and that WECA filed its appeal in less than a week after the 2009 C of O was issued.

FoBoGro contends, however, that the actual decision complained of was first contained in the earlier 2008 C of O because that C of O provided notice of a grocery store use extending to all three floors of the building. As such, it argues, WECA unreasonably delayed filing the appeal until November 2009, more than 14 months later.

The certificate of occupancy did authorize the grocery store throughout the subject property and was sufficiently clear in this regard so that FoBoGro made significant expenditures in reliance upon its issuance. However, WECA provided credible testimony that it was unaware of the 2008 C of O until approximately August of 2009.[8] Almost immediately, WECA was diligent in pursuing a remedy. DCRA revoked the 2008 C of O on October 14, 2009, approximately six weeks after WECA had notice of it. After that revocation, WECA had no obligation to take any further action unless and until a subsequent certificate of occupancy was issued. When a new C of O was issued on November 4, 2009, WECA filed this appeal six days later.

To recapitulate: a *laches* claim consists of two elements: unreasonable delay and prejudice as a result of that delay. *Sisson, supra.* Here, the Board finds no delay at all on WECA's part, let alone an unreasonable delay. FoBoGro argues that it has been prejudiced as a result of delays, citing the long delays associated with the BZA proceedings and legal proceedings, and the financial losses sustained. While FoBoGro may have sustained financial losses, it was not due to delay on WECA's part.

The appeal is barred by the doctrine of *estoppel*

The Court of Appeals has also recognized the availability of *estoppel* in zoning appeals. See *Sisson, supra, Saah v. D.C. Bd. of Zoning Adjustment,* 433 A.2d 1116 (D.C. 1981). *See also, Rafferty v. D. C. Zoning Comm'n.,* 583 A.2d 169, 175 (D.C. 1990); *Interdonato v. D.C. Bd. of Zoning Adjustment,* 429 A.2d 1000, 1003 (D.C. 1981); and W*ieck v. D.C. Bd. of Zoning Adjustment,* 383 A.2d 7, 11 (D.C. 1978). The application of *estoppel* is limited to situations where the equities are strongly in favor of the party invoking the doctrine. *Wieck at* 11.

[8] DCRA argued that WECA was on notice regarding the 2008 C of O when it became available to the affected ANC shortly after the C of O's issuance. However, the Board has rejected that very argument, finding that an ANC's knowledge of a building permit or C of O cannot be imputed to every person or association that may be affected. *Appeal No. 17109 of Kalorama Citizens Association* (2005).

To make a case of *estoppel*, FoBoGro must show that it: (1) acted in good faith; (2) on the affirmative acts of a municipal corporation; (3) made expensive and permanent improvements in reliance thereon; and (4) the equities strong favor the party invoking the doctrine. *Sisson*, 805 A.2d at 971.

The Board has no doubt that FoBoGro acted in good faith. As set forth above, immediately before FoBoGro's purchase of the business, the grocery store was operated on all three floors. Therefore, FoBoGro had no reason to believe that the grocery store use had been impermissibly expanded. While negotiating the purchase of the grocery store, FoBoGro acted in good faith and applied for a C of O. The 2008 C of O authorizing the use throughout the building was issued the same day and FoBoGro moved forward with the project. When the C of O was later revoked by the ZA, FoBoGro promptly responded to the ZA's concerns and a new C of O was issued. (Findings of Fact 45 – 47.)

There is also no doubt that FoBoGro relied on the affirmative act of DCRA when the ZA issued the 2008 C of O authorizing the grocery store use within the entire building area. FoBoGro relied on the 2008 C of O when it purchased the business and consummated the lease. FoBoGro further relied upon the issuance of the 2008 C of O when it entered into contracts for architectural and engineering plans and construction. Thereafter, FoBoGro hired employees for the store, and entered into contracts with distributors for grocery inventory. All told, FoBoGro allocated over $1,000,000.00 towards renovations, expenses, and business operations, and expended over $350,000.00 in renovations alone.

When balancing the equities, the equities favor FoBoGro. FoBoGro acted in good faith and reasonably believed the DCRA's 2008 certificate of occupancy authorized it to use the entire building for the grocery store. As outlined above, FoBoGro spent considerable sums in connection with the grocery business. While WECA has also acted in good faith, there is no evidence that it will be harmed by the continued operation of a grocery store that has been a neighborhood institution for over 60 years. In fact, WECA has never argued that it has been harmed in any way by the operations of the grocery store.

Finally, WECA argues that esto*p*pel is not available because the Court of Appeals found the expanded grocery store use to be illegal. This argument would negate the ability to invoke *estoppel*, because that defense only becomes relevant after the government discovers (or in this case is told) that it erroneously permitted an unlawful structure or use and then seeks or is requested to commence enforcement. Thus, the continuation of the unlawfully expanded grocery did not bar *estoppel*, but the impact of that use was part of the balancing of equities just performed by the Board. The Court of Appeals certainly understood this distinction when it authorized the Board to consider the *estoppel* claim, rather than holding that its finding of error also barred the Board's consideration of equitable defenses.

The 2009 C of O continued to permit the entire building to be used as a grocery store. The *estoppel* considerations discussed above would have required the ZA to issue that certificate even had he realized that the 2008 C of O impermissibly allowed the expansion of the nonconforming grocery store use beyond the first floor. These same considerations require the

Board, as a matter of equity, to dismiss the portion of the appeal alleging the unlawful expansion of the grocery store use beyond the first floor.

CONCLUSION

For the reasons stated above, the Board concludes that the Board's timeliness rule is a claims processing rule, and is not jurisdictional. Because FoBoGro and DCRA failed to raise the rule during the Board's proceedings, they have forfeited their ability to raise it now. The Board also concludes that FoBoGro did not meet its burden of demonstrating that WECA's appeal was barred by *laches.* However, the Board concludes that FoBoGro has established the defense of *estoppel* and therefore the portion of the appeal challenging the expansion of the nonconforming grocery store use beyond the first floor is dismissed.

Accordingly, it is **ORDERED** that the portion of the appeal remanded to the Board is **DISMISSED.**

VOTE: **4-0-1** (Lloyd J. Jordan, Michael G. Turnbull, Jeffrey L. Hinkle, and S. Kathryn Allen (by absentee vote) to Dismiss the remanded portion of the appeal; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 8, 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18868 of Eli and Margaret Joseph, as amended[1], pursuant to 11 DCMR § 3104.1, for a special exception under § 223, to allow an addition to a one-family detached dwelling, that extends a nonconforming structure under § 2001.3, in the WH/R-1-B District at premises 4547 Lowell Street, N.W. (Square 1605, Lot 50).

HEARING DATE: December 2, 2014
DECISION DATE: December 2, 2014

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 6, 7, and 21.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 3D and to owners of property within 200 feet of the site. The application as originally filed was a request for special exception relief pursuant to 11 DCMR § 3104.1, to allow an addition to a single-family detached dwelling not meeting the front yard setback requirements of the Wesley Heights Overlay/R-1-B District under § 1543.4. As a proposal for an addition to a single-family detached dwelling, it is eligible for special exception relief under § 223. However, § 1543.4 is not an enumerated subsection under § 223. Thus, the case was advertised for variance relief under § 1543.4. At the public hearing, the Applicant amended the application to request the § 223 special exception relief for an enlargement to a nonconforming structure (§ 2001.3).

The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. ANC 3D submitted a timely report in support of the application. The ANC's report indicated that at a regularly scheduled meeting held on October 1, 2014, with a quorum present, the ANC voted (7:0) to support the application. (Exhibit 30.)

The Office of Planning ("OP") submitted a report recommending approval of a variance from §

[1] The application initially sought special exception relief pursuant to § 223, not meeting the front yard requirements of § 1543.4. (Exhibit 1.) As § 1543.4 is not one of the subsections listed in § 223 from which relief may be granted, the case was advertised for an area variance not meeting the front yard setback requirements under § 1543.4, and analyzed as an area variance, both by the Applicant (Exhibit 32) and by the Office of Planning (Exhibit 34). At the public hearing, however, the Applicant amended the relief being sought to a special exception under § 223, to allow an addition to a one-family detached dwelling, that extends a nonconforming structure under § 2001.3, and that is the relief that the Board granted. The caption has been amended accordingly.

1543.4, and noted that the property is nonconforming as to minimum lot area and side yard. (Exhibit 34.) At the public hearing, OP expressed support for the amended special exception relief. The District Department of Transportation filed a report expressing no objection to the application. (Exhibit 31.) One letter from a neighbor in support of the application was filed in the record. (Exhibit 28.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under § 223. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE APPROVED ARCHITECTURAL PLANS AT EXHIBIT 11.**

VOTE: **4-0-1** (Lloyd J. Jordan, Peter G. May, S. Kathryn Allen, and Jeffrey L. Hinkle to Approve; Marnique Y. Heath not present, not 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: December 10, 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

BZA APPLICATION NO. 18868
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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. 18870 of Jennifer Keller, pursuant to 11 DCMR § 3104.1, for a special exception to allow an accessory apartment with a one-family semi-detached dwelling under § 202.10, in the R-1-B District at premises 3203 38th Street, N.W. (Square 1920, Lot 30).

HEARING DATE: December 2, 2014
DECISION DATE: December 2, 2014

SUMMARY ORDER

SELF-CERTIFIED

The Applicant provided a form certifying the zoning relief requested in this case, pursuant to 11 DCMR § 3113.2, and signed it. (Exhibit 5.) The Applicant did not have the signature of a licensed architect or attorney, as is required by § 3113.2. Subsection 3113.2 states:

> As an alternative to filing the zoning memorandum as required by the application form, applications for variances and special exceptions may be filed with the Director by architects or attorneys without the necessity of prior certification by the Zoning Administrator, provided that the architect or attorney certifies that the requirements set forth in the immediately following sentence are true and correct. Such architect or attorney shall certify to the Board that: (a) the architect or attorney is duly licensed to practice in the District of Columbia; (b) the architect or attorney currently is in good standing and otherwise entitled to practice in the District of Columbia; and (c) the applicant is entitled to apply for the variance or special exception sought for the reasons stated in the application. Nothing in this subsection is intended to affect the discretion of the Director to reject an application for failure to comply with the provisions of this subsection or this title.

For the reasons cited in her letter asking for a waiver of the architectural sign-off requirement on Form 135 pursuant to § 3113.2, the Applicant requested a waiver from that requirement under § 3113.2. (Exhibit 29.) The Board of Zoning Adjustment ("Board") granted the Applicant's waiver request.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled

and properly noticed meeting on November 17, 2014, at which a quorum was present, ANC 3C voted unanimously by a voice vote of the Consent Calendar to support the application. (Exhibit 28.) The Office of Planning ("OP") submitted a timely report and testified at the hearing in support of the application. (Exhibit 30.) The District of Transportation ("DDOT") filed a report expressing no objection to the application. (Exhibit 27.) A letter in support of the application was submitted by the adjacent neighbors, George W. Penny III and Mary D. Haskin. (Exhibit 32.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under § 202.10. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 202.10, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in the accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED.**

VOTE: **4-0-1** (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle and Peter G. May to APPROVE; Marnique Y. Heath, not present, not 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: December 5, 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.

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 NFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

12-Month Schedule of Monthly Meeting Dates for 2015

The Zoning Commission of the District of Columbia, in accordance with § 3005.1 of the District of Columbia Municipal Regulations, Title 11, Zoning, hereby gives notice that it has scheduled the following meetings. Meetings are held in the Jerrily R. Kress Memorial Hearing Room, Suite 220 South of 441 4th Street, N.W., #1 Judiciary Square, beginning at 6:30 p.m.

The dates of the Monthly Meetings for the following year of the Zoning Commission of the District of Columbia are as follows:

Regular Monthly Meeting	Second Monthly Meeting
January 12, 2015	January 26, 2015
February 9, 2015	February 23, 2015
March 9, 2015	March 30, 2015
April 13, 2015	April 27, 2015
May 11, 2015	--
June 8, 2015	June 29, 2015
July 13, 2015	July 27, 2015
September 21, 2015	--
October 19, 2015	--
November 9, 2015	November 23, 2015
December 14, 2015	--

Please note that these dates are subject to change.

Additional meetings as needed may be called by the presiding officer or by three (3) members. However, no meetings or hearings are held in the month of August.

The proposed agenda for each meeting is posted in the office of the Commission and available to the public at least four days prior to the meeting.

For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF CLOSED MEETINGS

TIME AND PLACE: **Each Monday @ 6:00 P.M. that a Public Meeting is Scheduled to be Held for Calendar Year 2015 & January 11, 2016**
Office of Zoning Conference Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

The Zoning Commission, in accordance with § 406 of the District of Columbia Administrative Procedure Act ("Act")(D.C. Official Code § 2-576), hereby provides notice it will hold closed meetings, either in person or by telephone conference call, at the time and place noted above, regarding cases noted on the agendas for meetings to be held for calendar year 2015 and January11, 2016, in order to receive legal advice from its counsel, per § 405(b)(4), and to deliberate, but not voting, on the contested cases, per § 405(b)(13) of the Act (D.C. Official Code § 2-575(b)(4) and (13)).

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeals: 2014-53

April 30, 2014

Dr. Keith Hunter

Dear Dr. Hunter:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 18, 2013 (the "Appeal"). You ("Appellant") assert that the Department of Health ("DOH") improperly withheld records in response to your request for information under DC FOIA on February 18, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought records "relating to the Instant Recess—Let's Move DC grant that was reported to the Department of Health and Human Services about performance, the abrupt suspension, the justification for the suspension and the reallocation of funds," including records of "conversations and/or meetings" regarding eight DOH employees and a councilmember.

In response, by email dated March 31, 2014, DOH notified Appellant that it would be providing responsive records to him, but that it would be withholding or redacting other records based upon the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege under D.C. Official Code § 2-534(a)(4).

On Appeal, Appellant challenges the response, stating that DOH

> supplied me with many documents but none responsive to my clearly written request for documents produced by the DOH that were informing the DHHS officials who would be involved with the evaluation of the project.
>
> The reason that this is important is because as the grant was abruptly suspended and because my ability to communicate with DOH officials was nil, it is important for my knowledge of the evaluation process as this impacts the way [ ] my company, Metropolitan DC Health Consortium is [ ] known by the Federal Health Agency charged with promoting the health of the United States population.

In response, dated April 23, 2014, DOH reaffirmed its position. By way of background, DOH indicates that Metropolitan DC Health Consortium, the company owned by Appellant, and the District are parties to ongoing litigation arising from the grant made by DOH to Metropolitan DC Health Consortium and the response to a previous FOIA request. DOH states that the search was conducted by the Office of Grants Management and the Community Health Administration, the DOH offices had programmatic responsibility, pursuant to a request by the FOIA officer. DOH indicates that while that it provided 1702 pages of responsive records to Appellant, none of the withheld or redacted records involved the Department of Health and Human Services ("DHHS"). DOH also states that pursuant to a post-Appeal search which it conducts whenever it receives a FOIA appeal, it located, and provided to Appellant, one additional record, an annual report submitted by DOH to DHHS.

By email dated April 25, 2014, DOH submitted a supplement in response to an invitation by this office to clarify the form in which the requested records are or would be maintained and the manner in which the search was conducted for the requested records. As to the form in which the requested records are or would be maintained, DOH identifies email, electronic word processing or spreadsheet formats, electronic files in the federal Block Grant Management System, and paper. As to the manner in which the search was conducted, DOH supplemented its response to address both emails and other forms of records. With respect to emails, through the Office of the Chief Technology Officer, DOH searched the email accounts, or "mailboxes," of the eight DOH individuals which Appellant identified in the FOIA Request using the terms "Instant Recess," "MDCDC," and "Metro DC Health Consortium." DOH notes that the search terms were chosen based on its experience in performing searches in connection with the present litigation between Metropolitan DC Health Consortium and the District. DOH states that the search did not produce any emails involving DHHS. With respect to the other records, DOH first revised its initial response to indicate that, in addition to the Office of Grants Management ("OGM") and the Community Health Administration ("CHA"), its Office of the Director ("OD") would potentially have the requested records. DOH then stated that four individuals were requested to perform the search: the OD Chief Operating Officer, the OD Chief of Staff, the OGM director, and the CHA director (two of whom were individuals identified by Appellant in the FOIA Request). DOH also indicated that four other individuals, two of whom were individuals identified by Appellant in the FOIA Request, were also involved in the search. DOH stated that, in accordance with standing instructions, employees "must search across their management span for documents responsive to FOIA requests which involves asking the relevant subordinates to search." DOH also stated that "[s]earching includes the paper and electronic records described [previously]."

In its initial response to the Appeal, DOH indicated that it located, and provided to Appellant, one additional record, an annual report submitted by DOH to DHHS. In its supplement, DOH stated that the annual report was nonresponsive to the FOIA Request because it did not mention Metropolitan DC Health Consortium, but it provided the record to Appellant as Appellant had complained to DOH that it did not receive such 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).

Appellant complains that DOH has not provided to him all of the records which he requested. In particular, Appellant complains that there were no records responsive to his "clearly written request for documents produced by the DOH that were informing the DHHS officials who would be involved with the evaluation of the project." Appellant does not, however, contest the basis on which DOH withheld or redacted records: the deliberative process privilege, the attorney-client privilege, and the work product privilege. Moreover, DOH states that none of the withheld or redacted records involve DHHS. Thus, although Appellant has not framed the issue as such, we believe that the Appellant has placed the adequacy of the search in issue and, more particularly, the adequacy of the search regarding records of communications with DHHS.

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 our analysis, we will keep in mind that, as indicated above, Appellant sets forth a challenge the adequacy of the search only with respect to records of communications with DHHS, apparently being satisfied that the search was otherwise adequate.

As an initial step in the search, an agency needs to identify the divisions or offices in which the requested records are likely to be found. Here, as is appropriate, DOH identified the Office of Grants Management ("OGM"), the Community Health Administration ("CHA"), and Office of the Director ("OD") as the likely offices as such offices had programmatic responsibility for the grant to Metropolitan DC Health Consortium. As DOH has indicated, it conducted a search in two phases: emails and other forms of records.

As set forth above, with respect to emails, through the Office of the Chief Technology Officer, DOH searched the email accounts, or "mailboxes," of the eight DOH individuals which Appellant identified in the FOIA Request using the terms "Instant Recess," "MDCDC," and "Metro DC Health Consortium." Communications with DHHS regarding evaluation of the grant project would be expected to be made by the higher-level officials of DOH and it is such officials whose email accounts were selected for search. The correctness of the selection would be confirmed by the identification of these individuals in the FOIA Request by Appellant, who was dealing with DOH regarding the grant and would have knowledge of the agency employees likely to have had such communications. While Appellant also identified Councilmember Catania in the FOIA Request, as DOH correctly indicates, an agency is only required to produce records in its possession and the email account of a councilmember is not an agency record, so a search of the email account of Mr. Catania is not required.

As we have stated in past decisions, an administrative appeal under DC FOIA is a summary process and we have not insisted on the same rigor in establishing the adequacy of a search as would be expected in a judicial proceeding. In this regard, unlike judicial proceedings, we have not required the submission of search terms to establish the adequacy of a search. Nevertheless, DOH has provided us with the search terms that it used. We note that DOH used the search term "Metro DC Health Consortium" although Appellant states that the name of his company is Metropolitan DC Health Consortium. However, as DOH has used the search term "Metro DC Health Consortium" to achieve an adequate search in connection with the litigation between the District and the company of Appellant, we do not find that the use of this term rather than Metropolitan DC Health Consortium caused a deficiency in the search. Therefore, we find that the search of emails for communications with DHHS was adequate.

In its initial response to the Appeal, DOH identified two divisions which had programmatic responsibility for records of the type requested, but stated that a search was made without stating how the search was conducted. Therefore, in order to have a fuller administrative record on which to make a decision, we invited DOH to supplement the record to explain the manner in which the search was conducted. In its supplement, as set forth above, DOH modified its response to identify an additional division which may have programmatic responsibility for records of the type requested. In addition, DOH identified the types of records, other than emails, in which the requested records would be maintained: electronic word processing or spreadsheet formats, electronic files in the federal Block Grant Management System, and paper. Finally, DOH indicates that four individuals made a "search across their management span" and "[s]earching includes the paper and electronic records described [previously]."

Again, as is appropriate, DOH identified the divisions where the requested records were likely to be found and the form in which such records would be maintained. However, as to the manner in which search was conducted, DOH states, in the main, that the individuals charged to conduct the search made a "search across their management span." DOH did clarify that "[s]earching includes the paper and electronic records described [previously]." It is not clear from those statements the manner in which the search was conducted, e.g., it does not state which employees' records were searched. However, based upon these statements and the factual circumstances described in the record, we can infer the steps taken in conducting the search. First, it appears that DOH searched its federal Block Grant Management System for responsive records. Second, having identified the appropriate individuals whose email accounts were to be searched, it appears that the common or personal electronic drives of those individuals (depending upon the manner in which records were maintained) were searched. Third, it appears that the paper files within the physical offices where such individuals were located were searched. Although we have inferred that this is the manner in which the search was conducted, it has not been expressly stated on the administrative record. In the interests of government efficiency, we do not wish to order a new search when a search already made in this manner is sufficient. In this regard, we note that Appellant does not challenge the sufficiency of the search with respect to records other than the communications with DHHS. Furthermore, we note that challenge is based on the expectation that such records exist rather than any personal knowledge, as stated on the record, that such records exist.[1] Thus, while we infer that the search was

[1] Such expectation is based on a statement alleged to have been made by the General

conducted was sufficient,[2] we are directing DOH to confirm to Appellant that the search was conducted substantially in the manner in which we have described above or, if the manner in which the search was conducted varied from such description, to state the manner in which the search varied. If the search was not conducted substantially in the manner in which we have described above, we would be willing to consider a request for reconsideration of this decision by Appellant, which request specifies the manner in which the search was deficient.

Conclusion

Therefore, the decision of DOH is upheld; provided, that DOH shall provide a statement as set forth above and subject to filing of a request for reconsideration of the decision as set forth above. 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: Phillip Husband, Esq.

Counsel/FOIA Officer, who, in turn, disputes the accuracy of the allegation.

[2] We draw no inference from the furnishing of an annual report to Appellant subsequent to the filing of the Appeal as DOH indicates that such record was nonresponsive to the FOIA Request and was provided because Appellant specifically requested such record outside the FOIA Request.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-54

April 25, 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 April 2, 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 March 11, 2014 (the "FOIA Request) by failing to respond to the FOIA Request.

Appellant's FOIA Request sought records relating to the arrest, including any investigation and audio of 911 calls, of the named client. When MPD failed to provide a timely final response to the FOIA Request, Appellant initiated the Appeal.

In its response to the Appeal, dated April 25, 2014, MPD stated that, on April 2, 2014, it responded by email to Appellant, providing him with one responsive record and notifying him that it was withholding the other responsive record, a 911 call, based on the exemption for privacy. (We note that the date of the transmission of the MPD response to the FOIA Request was also the date of the submission of the Appeal.) 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 TO THE MAYOR
Freedom of Information Act Appeal: 2014-55

May 12, 2014

Mr. Leon P. Lechene

Dear Mr. Lechene:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated April 2, 2014 (the "Appeal"). You ("Appellant") assert that the Office of the Secretary of the District of Columbia ("OS") improperly withheld records in response to your request for information under DC FOIA dated March 16, 2014 (the "FOIA Request) by failing to respond to the FOIA Request.

Background

Appellant's FOIA Request sought "the official land instrument or document filed with the District for the land upon which the National Archives Building [is located]." When OS failed to provide a response to the FOIA Request, Appellant initiated the Appeal.

Although it obtained an extension to respond to the Appeal, OS has not done so. However, on May 9, 2014, OS forwarded to this office a "status update" on the FOIA Request in the form of a letter, of even date therewith, to Appellant, stating that it "initiated a search with the DC Archives" and indicated that it would be able to respond during the following week.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that the 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, but, in this case, the extension was not exercised. Accordingly, the responsive records will not be produced within the statutory period.

However, there is little relief that we can currently offer. The most that we can do is to order OS to complete the search that it has already initiated and to respond to the FOIA Request. Thus, we could view the Appeal as moot on this basis as OS has indicated that it will respond to the FOIA Request, the remedy which the Appeal seeks. Nevertheless, although the outcome will be the same, we can provide some assurances to Appellant by ordering OS to complete the search and to provide any responsive records within five (5) business days after the date of this decision.[1]

Conclusion

Therefore, we remand this matter to OS for disposition in accordance with this decision, without prejudice to challenge, by separate appeal, the response of OS 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 District of Columbia Superior Court.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Karen Andre, Esq.

[1] This is the same approach which we took in Freedom of Information Act Appeal 2011-69.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-56

May 13, 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 24, 2014 (the "Appeal"). You ("Appellant") assert that the Department of Corrections ("DOC") improperly withheld records in response in response to your request for information under DC FOIA dated February 1, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought records related to an alleged fight which occurred in May, 2008 between two named inmates during the course of speech therapy provided by District of Columbia Public Schools ("DCPS") teachers to juvenile inmates at a DOC facility. Appellant submits that, in response, by letter dated February 24, 2014, DOC stated that, after a search, it was unable to locate responsive records. On Appeal, Appellant states that he considers the response of a denial of the FOIA Request.

In its response, by letter emailed May 1, 2014, DOC reaffirmed its position. DOC indicates that the request and search history is more involved than Appellant sets forth in the Appeal and that DOC has, in fact, made three separate searches. First, DOC made a search in response to a FOIA request submitted on January 27, 2014 and did not find any responsive records, but, in informing Appellant of the results of the search, suggested that it could conduct another search if Appellant provided more details, such as the date of the fight or the specific date of the incident. Second, in response to this suggestion, Appellant submitted a revised request, the FOIA Request as identified above, but DOC did not find any responsive records pursuant to the search based on this revised request. Third, on April 3, 2014, Appellant submitted a copy of a 2008 employee report and requested the official report, but, again, DOC could not locate any responsive records.

Regarding the manner in which the search was conducted, DOC states that it conducted a "search of [the] hard-copy incident records repository as well as [the] electronic version maintained in Lotus Notes, Paper Clips and the JACCS." In addition, DOC states that under its agency record retention schedule, the relevant portion of which it attached, it retains investigative reports for "Significant Incidents" for two years, which period has elapsed with respect to the subject incident.

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 states that he considers the initial response of DOC as a denial of the FOIA Request, but states no reason for such conclusion. Appellant does indicate that incident reports were completed by DCPS teachers who were injured in the alleged fight. Although Appellant, an attorney, does not so state, we infer that 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 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).

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 has been shown in prior appeals,[1] the electronic records of DOC are maintained in Lotus Notes, Paper Clips, and JACCS.[2] DOC searched for incident records in all of these electronic systems. In addition, it searched its paper-based records for incidents. As these locations would comprise the likely locations where the responsive records would be located, we find that the search was adequate. Furthermore, DOC provides a reason why responsive records were not likely to be located, i.e., any responsive records would not be retained under the retention schedule of the agency.

Conclusion

Therefore, the decision of DOC 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: Oluwasegun Obebe, Esq.

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[1] *See* Freedom of Information Act Appeal 2013-44, Freedom of Information Act Appeal 2013-74, and Freedom of Information Act Appeal 2014-01.

[2] In its submission in Freedom of Information Act Appeal 2013-74, DOC explained that "'JACCS is the acronym for the agency's electronic records maintenance system, known as the Jail and Community Corrections System.'"

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-57

May 13, 2013

Ashley L. Riddell

Dear Ms. Riddell:

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 May 8, 2013 (the "Appeal"). Your law firm, on behalf of a named client ("Appellant"), asserts 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 January 27, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought records relating to a "hit and run incident" on December 18, 2013 at 42nd and Albemarle Streets, N.W., in which the named client was struck while in a crosswalk. The FOIA Request states that FEMS "personnel reported to the scene to attend to [the named client]," who believes that a call was made to 911 regarding this incident." In response, by email dated March 5, 2014, FEMS provided "an event chronology on the incident and the dispatch calls," but withheld the 911 call "because [the] caller stated her name and telephone number." The identity of the caller was redacted on the records provided.

On Appeal, Appellant challenges the withholding of the 911 call and redactions on records which were provided.

> The eyewitness's identifying information is crucial in our investigation to determine the identification of the motorist who struck our client. It is our belief the eyewitness spoke with the motorist after the incident and can help us in locating this individual. The 911 call, event chronology and reports will provide us with the necessary information to find the person responsible for the incident. The Metropolitan Police Department was not dispatched to the scene, so no police report exists for this incident.

In its response, by email dated May 9, 2014, FEMS reaffirmed its position. It states that "[a]s background, the Department evaluated this request under the Health Insurance Portability and Accountability Act (HIPAA) instead of FOIA because the records sought related to pre-hospital care and transport received by [the named client]." However, FEMS states that it based its decision to withhold or redact the records in question on 5 U.S.C. § 552a to prevent an warranted

invasion of privacy. "Under the federal Privacy Act, a government agency cannot disclose any record in its system with the prior consent of the individual to whom the record pertains." In addition, citing Freedom of Information Act Appeal 2013-06 and federal case law under FOIA, FEMS states that "someone who witnesses an alleged criminal infraction has a privacy interest in their personal information even though it is contained in a government record." FEMS provided copies of the records provided and a copy of the 911 call for *in camera* review.

Pursuant to our invitation to supplement the administrative record, FEMS states that it "does not have the technical capability to redact the audio recording."

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).

FEMS states that it evaluated the FOIA Request not under DC FOIA but under the federal Health Insurance Portability and Accountability Act. However, as we detailed in Freedom of Information Act Appeal 2014-20, in which FEMS was a party, the Health Insurance Portability and Accountability Act does not pre-empt DC FOIA as state public disclosure laws equivalent to the federal FOIA determine whether or not the applicable disclosures are to be made.

Notwithstanding the Health Insurance Portability and Accountability Act and its implementing regulations, FEMS states that it premises its decision to withhold or redact the records in question based on 5 U.S.C. § 552a, the federal Privacy Act. However, this law applies only to federal agencies.

> The provisions in 5 U.S.C.A. 552a govern the conditions of disclosure of personal records by a federal agency. Information disclosed which does not originate from federal agency records enjoys no protection under 552a(b).

Winters v. Board of County Comm'rs, 4 F.3d 848, 852 (10th Cir. 1993).

However, in the alternative, FEMS justifies its decision based on DC FOIA, citing Freedom of Information Act Appeal 2013-06 and the principles stated therein. Thus, the issue in the Appeal is whether FEMS may withhold the audio of the 911 call and redact portions of the records provided because disclosure would constitute a clearly unwarranted invasion of personal privacy exempt from disclosure under D.C Official Code § 2-534(a)(3)(C). [1] As FEMS argues, the principles stated in Freedom of Information Act Appeal 2013-06 control the outcome here. For the convenience and benefit of Appellant, we will re-state the pertinent principles and analysis here, with adaptations as may be necessary to conform to the particular circumstances of the Appeal.

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The administrative record indicates that the records provided were redacted to protect the identity of a private individual identified therein. The administrative record also indicates that the caller is a witness regarding the circumstances which gave rise to the call. An individual who is a witness has a privacy interest in personal information which is in a government record. Disclosure may lead to unwanted contact and harassment. *Kishore v. United States DOJ*, 575 F. Supp. 2d 243, 256 (D.D.C. 2008); *Blackwell v. FBI*, 680 F. Supp. 2d 79, 93 (D.D.C. 2010). *See also Lahr v. NTSB*, 569 F.3d 964 (9th Cir. 2009)(privacy interest found for witnesses regarding airplane accident); *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1023 (9th Cir. 2008)(privacy interest found for government employees who were cooperating witnesses regarding wildfire); *Lloyd v. Marshall*, 526 F. Supp. 485 (M.D. Fla. 1981) ("privacy interest of the witnesses [to industrial accident] and employees is substantial . . ." *Id*. at 487); *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984)(privacy interest found for witnesses regarding industrial accident); *Codrington v. Anheuser-Busch, Inc.*, 1999 U.S. Dist. LEXIS 19505 (M.D. Fla. 1999) (privacy interest found for witnesses regarding discrimination charges). An individual does not lose his privacy interest because his or her identity as a witness may be discovered through other means. *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 922 (11th Cir. 1984); *United States Dep't of Defense v. Federal Labor Relations*

[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 Appellant asserts that the records in this case involves a "hit and run incident," we will judge this matter by the standard for Exemption (3)(C).

Auth., 510 U.S. 487, 501 (1994). ("An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.")

There is clearly a personal privacy interest in the withheld record and the redactions in this matter.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

In this case, Appellant has offered, at most, a private need to overcome the privacy interest. However, disclosure is not evaluated based on the identity of the requester or the use for which the information is intended. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004); *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 771 (1989). As the administrative record does not otherwise indicate that the conduct of FEMS 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 FEMS. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Thus, as this is not a case involving the efficiency or propriety of agency action, there is no public interest involved.

> In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure. See *Ray*, 112 S. Ct. at 548-50; *Dunkelberger*, 906 F.2d at 781. In this case, however, where we find that the request implicates no public interest at all, "we need not linger over the balance; something … outweighs nothing every time." *National Ass'n of Retired Fed'l Employees v. Horner*, 279 U.S. App. D.C. 27, 879 F.2d 873, 879 (D.C. Cir. 1989); see also *Davis*, 968 F.2d at 1282; *Fitzgibbon v. CIA*, 286 U.S. App. D.C. 13, 911 F.2d 755, 768 (D.C. Cir. 1990).

Beck v. Department of Justice, 997 F.2d 1489, 1494 (D.C. Cir. 1993).

D.C. Official Code § 2-534(b) provides, in pertinent part, that "any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of

those portions which may be withheld from disclosure under subsection (a) of this section." However, FEMS indicates that the 911 call is non-segregable as it does not have the technical capability to redact the recording. Accordingly, we find that redaction of the 911 call is not feasible. We note that in prior decisions, disclosure was not required where the agency did not have the capability to modify a 911 recording. *See*, e.g., Freedom of Information Act Appeal 2013-06.

Conclusion

Therefore, the decision of FEMS 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: Shakira Pleasant, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-58

May 8, 2014

Mr. Gerald J. Malloy

Dear Mr. Malloy:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated April 17, 2014 (the "Appeal"). You ("Appellant") assert that the Department of Corrections ("DOC") improperly withheld records in response to your request for information under DC FOIA dated April 1, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request referenced "three legal visits" by the United States Parole Commission ("USPC"), but requested only a record with respect to the third legal visit, a "'tape recorded transcript' of the supervised release revocation hearing" which was held in late 2010 at the Central Treatment Facility.

In response, by letter dated March 28, 2014, DOC treated the FOIA Request as a request for records of all three visits by the USPC, but it did not provide any records, stating that "the United States Parole Commission (USPC) assumed responsibilities for DC Code Inmates in year 2000 and maintains records of its activities."

On Appeal, Appellant challenges the response to the FOIA Request with respect to all three visits, stating, in pertinent part, that DOC should not be able to "'pass the buck back to another government agency'" and the venue of the proceedings falls within the jurisdiction of DOC.

In its response, by letter emailed May 7, 2014, DOC reaffirmed its position. DOC indicates that, upon a subsequent search, it did find one record, a USPC Notice of Action, which it will provide to Appellant, but that it "is not the custodian of USPC's 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 contends that DOC must provide the record, here a hearing transcript, because the venue of the proceedings falls within the jurisdiction of DOC.[1] However, this contention is not correct. D.C. Official Code § 2-532(a) provides, in pertinent part, that "[a]ny person has a right to inspect . . . any public record of a public body . . . in accordance with reasonable rules. . . " DCMR § 1-402.1 provides that "[a] request for a record . . . shall be directed to the particular agency." Under the test enunciated by the Supreme Court in *DOJ v. Tax Analysts*, 492 U.S. 136 (1989), agency records are those that are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request. In this case, neither test has been met. Generally, an agency "is under no duty to disclose documents not in its possession." *Rothschild v. DOE*, 6 F. Supp. 2d 38, 40 (D.D.C. 1998). *See also* Freedom of Information Act Appeal 2012-55 (where appellant argued that the "documents are generated from a principal activity of the agency" and must be produced, WASA not required to provide records not in its possession) and must provide the records) and Freedom of Information Act Appeal 2011-01 (request to DOC for mugshots not proper because such records were maintained by the Metropolitan Police Department). Here, it is USPC, not DOC, who maintains the requested records, so DOC has no obligation to provide the requested records. The fact that the hearing may have taken place in a DOC facility does not mean that it maintains a hearing transcript. Appellant should note that section 2.56 of the USPC Rules and Procedures Manual provides specifically for the furnishing of records by USPC to a prisoner or parolee.[2]

In its response to the Appeal, DOC indicates that it has located a USPC Notice of Action, which it will provide to Appellant. However, we note that while such record relates to Appellant, which was nonresponsive to his request, it does not indicate that DOC would otherwise maintain copies of USPC records. As our past decisions have stated, a search will be deemed to be adequate if an individual familiar with the records of an agency states that an agency does not

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[1] While the Appeal challenges the failure to provide records regarding three "legal visits," the FOIA Request only sought one record and we will not re-write the FOIA Request.

[2] Section 2.56 (e) and (f) provide: "(e) *Hearing Record*. Upon request by the prisoner or parolee concerned, the Commission shall make available a copy of any verbatim record (e.g., tape recording) which it has retained of a hearing, pursuant to 18 U.S.C. 4208(f).
(f) *Costs*. In any case in which billable costs exceed $14.00 (based upon the provisions and fee schedules as set forth in the Department of Justice regulation 28 C.F.R. 16.10), requesters will be notified that they will be required to reimburse the United States for such costs before copies are released."

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).[3]

Conclusion

Based on the foregoing, the decision of DOC is upheld. The Appeal is dismissed.

If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Oluwasegun Obebe, Esq.

[3] Moreover, the Manual indicates that USPC would be the custodian of the parole records and that DOC would not ordinarily have possession of such records. Section 2.205(a) of the Manual states that "the contents of supervised release records shall be confidential and shall not be disclosed outside the Commission and CSOSA (or the U.S. Probation Office) except as provided in paragraphs (b) and (c) of this section." Section 2.205(b) states: "Information pertaining to a releasee may be disclosed to the general public, without the consent of the releasee, as authorized by § 2.37." Under section 2.37(b), "[i]nformation concerning parolees may be released . . . to a law enforcement agency (1) as deemed appropriate for the protection of the public or the enforcement of the conditions of parole or (2) pursuant to a request under 18 U.S.C. 4203(e)." Thus, while Appellant is still a prisoner, this indicates that DOC would not maintain USPC records in the ordinary course of business.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-59

May 28, 2014

Ann-Marie and Ray Kuyler

Dear Ms. and Mr. Kuyler:

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 May 5, 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 February 5, 2014 (the "FOIA Request") by failing to respond to the FOIA Request.

Appellant's FOIA Request sought records held by Stoddert Elementary School regarding themselves or their child, manuals and instructions used by DCPS regarding reporting under D.C. Official Code § 4-1321, and any report regarding their student grievance request. Appellant initiated the Appeal, stating that a response to the FOIA Request was not received.

In its response, dated May 27, 2014, DCPS stated that it has been providing responsive records to Appellant on a rolling basis, that it has completed the production of such records, and that it has not withheld any responsive records. Based on the foregoing, we will now consider the Appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of DCPS.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Donna Whitman Russell, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-60

June 5, 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 April 29, 2014 and supplemented April 30, 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 March 11, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought records relating to the arrest, including any investigation and audio of 911 calls, of a named client. When MPD failed to provide a timely final response to the FOIA Request, Appellant initiated an appeal, Freedom of Information Act Appeal 2014-54, but, on the date that Appellant filed the appeal, MPD responded to Appellant. Freedom of Information Act Appeal 2014-54 was dismissed as moot, but without prejudice to Appellant to assert any challenge, by separate appeal, to the response of MPD. In its response to the FOIA Request, MPD provided an arrest report regarding the client, but withheld a 911 call based on the exemption from disclosure under D.C Official Code § 2-534(a)(2). In addition, MPD stated that it was still awaiting the results of a search for requested emails.[1]

On Appeal, Appellant contests the response of MPD, stating three challenges. First, Appellant contends that "MPD incorrectly asserts that they cannot release the 911 transcript," but indicates that "a redacted version" would be acceptable. Second, Appellant states that MPD "never provided the results of their promised e-mail search." Third, Appellant asserts that MPD did not provide a "complete set of arrest documents."

[1] In its response to Freedom of Information Act Appeal 2014-54, MPD stated that it did not locate any responsive emails as a result of its search, but Appellant was not in possession of such response when the Appeal was filed.

In response, dated May 29, 2014, MPD stated that it made a subsequent search for responsive records in the MPD "paper and computer files" and located "a property book entry and an entry in a department database relating to the client's arrest," which records were provided to Appellant, but that there were no other responsive records. Insofar as the form PD 163 was concerned, MPD could not locate the original form and provided to Appellant the only form PD 163 which it could locate. With respect to the 911 call, MPD clarifies its previous response, indicating that while any 911 call would be withheld based on the exemption for privacy, no responsive 911 recording exists. MPD explains that, pursuant to its records retention schedule, 911 recordings are purged after 3 years and the subject arrest occurred on November 14, 2009. MPD also included its response to Freedom of Information Act Appeal 2014-54, where MPD stated that it did not locate any responsive emails as a result of its search.

MPD was invited to supplement the administrative record to clarify the locations, e.g., divisions, where arrest records are maintained, the form in which the arrest records are maintained, and whether all the forms of records at such locations were searched. In response, MPD stated:

> Arrest records are maintained in two locations. These records are initially maintained at the police district in which the arrest took place. These records are maintained in paper-based files. After short period of time copies of the records are sent to the Records Branch at police headquarters for review and maintenance. These records are also maintained in paper-based files. Arrest records may also be entered in an electronic database computer system also located at police headquarters and managed by the Records Branch.
>
> The search for responsive documents encompassed a search of paper-based files at the police district in which Mr. Sharp's client was arrested; the paper-based files at the Records Branch; and the electronic database at the Records Branch. A search was also made in an electronic database called Columbo. This database is maintained by the Criminal Investigations Division located at police headquarters. Although this database does not contain arrest documents, it does contain arrest information that may be used by the departments' investigators. The documents previously released are the only responsive documents identified following these searches.

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 first challenge by Appellant is to the withholding of, or at the least, the failure to redact, the audio of a 911 telephone call. In Freedom of Information Act Appeal 2013-55, in which Mr. Sharp and his law firm, on behalf of another client, was the appellant, we held that MPD may withhold the audio of a 911 call because disclosure would constitute a clearly unwarranted invasion of personal privacy exempt from disclosure under D.C Official Code § 2-534(a)(3)(C) and that the 911 audio was non-segregable as MPD does not have the technical capability to redact the audio. Appellant does not set forth any change in law or technical capability of MPD which has occurred since the issuance of Freedom of Information Act Appeal 2013-55. For the reasons stated in Freedom of Information Act Appeal 2013-55, we would have upheld the withholding of the 911 call. However, here MPD has stated that it does not have a responsive 911 recording, which statement is consistent with its stated records retention practice. Thus, there is no withholding to be challenged.

The second challenge stated by Appellant is the failure to respond to the portion of the FOIA Request regarding emails. However, as it stated when it responded to the appeal in Freedom of Information Act Appeal 2014-54, MPD states that it responded to this portion of the FOIA Request and that it did not locate any responsive emails as a result of its search. Accordingly, this challenge is moot.

The third challenge stated by Appellant is the failure of MPD to provide a "complete set of arrest documents." The issue raised is the adequacy of the search by MPD, although it is not so stated by Appellant and Appellant does not indicate the reason why the search is believed to be inadequate.

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).

Appellant asserts that MPD has failed to provide a "complete set of arrest documents." MPD explains that while arrest records are initially maintained in paper-based files at the police district in which the arrest took place for a short period, these records are transferred to the Records Branch and maintained in an electronic database and in paper-based files. Here, MPD searched both the electronic database and the paper-based files at the Records Branch, the likely location for the maintenance of the records and the types of files where the arrest records would be maintained. However, MPD did not cease its efforts with those searches. Although the arrest records would be unlikely to be maintained at the police district in which the arrest took place as the subject arrest occurred in 2009, MPD searched the paper-based files there. In addition, although it does not contain arrest records, MPD searched an electronic database at the Criminal Investigations Division which contains arrest information. Moreover, MPD explains that it did not have an original of the PD 163 and furnished to Appellant the only copy available. Accordingly, we find that the search was adequate.

Conclusion

Therefore, the decision of MPD is moot in part and upheld in part.

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 TO THE MAYOR
Freedom of Information Act Appeal: 2014-61

June 5, 2014

Ms. Andrea Noble

Dear Ms. Noble:

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 May 13, 2014 (the "Appeal"). You ("Appellant") assert that the Executive Office of the Mayor ("EOM") improperly withheld records in response to your request for information under DC FOIA dated February 17, 2014 (the "FOIA Request) by failing to respond to the FOIA Request.

Appellant's FOIA Request sought "all email correspondence sent to and from Deputy Mayor Paul Quander since December 1, 2013 containing" certain specified search terms. When EOM failed to provide a response to the FOIA Request, Appellant initiated the Appeal.

In response, by email dated June 3, 2014, EOM stated that it will be providing records to Appellant on June 4, 2014. 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 EOM.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Karen Andre, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-62

June 5, 2014

Dr. Keith Hunter

Dear Dr. Hunter:

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 May 7, 2014 (the "Appeal"). You ("Appellant") assert that the Department of Health ("DOH") improperly withheld records in response to your request for information under DC FOIA on April 15, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought records "relating to the Instant Recess grant award that involved the evaluator(s) of the grant and/or [a named employee]." Appellant identified certain key words and individuals in the FOIA Request.

DOH provided four partial responses and a final response to the FOIA Request. The first two partial responses provided responsive emails (identified as Scan 5, Scans 7-25, and Scans 26-40) and the third partial response provided attachments from such emails. The fourth partial response notified Appellant that DOH was withholding specified responsive records, as follows:

> I am withholding Scans 1, 2, 3, 4, and 6.
>
> Scans 1, 2, 3, and 6 evidence my legal advice to DOH representatives or the response from one DOH representative responding to my legal advice. Scans 1, 2, 3 and 6 relate to the searches required for your FOIA request faxed of April 15, 2014. Scans 1, 2, 3 and 6 are email strings covered by the attorney-work product privilege and the attorney-client privilege. Scan 4 relates to FOIA Appeal MLC2014-53 initiated by you. Scan 4 involves my instruction to a paralegal regarding the processing and handling of your FOIA Appeal. This email string is covered by the attorney-work product privilege and the attorney-client privilege.
>
> No reasonably segregable portion of the email strings would exist if the privilege materials were redacted.

On May 6, 2014, Appellant emailed DOH, stating: "Nothing produced yet has referenced an evaluator which is what was requested. Is there no document that provides the input of an evaluator from DOH?" DOH sent Appellant a final response to the FOIA Request, stating:

> Further to your May 6, 2014, email, the emails that I provided to you earlier included all the persons and the key words that you referenced in your Freedom of Information Act (FOIA) request faxed on April 15, 2014.
>
> Officials from the Department of Health have advised me that all documents sought by your April 15th FOIA request (1) were provided to you via my four emails sent on May 5, 2014 or (2) were previously provided to you in response to other FOIA requests or in response to discovery requests in the lawsuit that you and Metropolitan DC Health Consortium filed against the District of Columbia. As such, I have been provided no additional documents to provide to you in response to your April 15, 2014 FOIA request.

On Appeal, Appellant challenges the responses to the FOIA Request, stating, in pertinent part:

> [M]y grant . . . was like all grants, supposed to have an evaluator assigned to the grant. I specifically asked [DOH] to provide the evaluator's evaluation(s) whom I thought was [the named employee]. . . .
>
> When I received the scans from Mr. Husband, there was [no] reference to [the named employee] nor any evaluator nor any evaluations. Many documents have been proffered but not responsive to my request for the documents that were generated by an evaluator.
> . . .
>
> I believe that if no evaluation had been done then that should somehow be acknowledged. That would appear to be an easier task than to forward non responsive documents again. Alternatively, evaluations and the evaluator's name and information may be contained in the scanned documents that were withheld.

In response, dated June 2, 2014, DOH reaffirmed its position. As to the records withheld, DOH submitted a Vaughan index which indicates that there were five records withheld on the basis of the attorney-client privilege and the work-product privilege. As to the adequacy of the search, DOH set forth in detail the manner in which it conducted the search.

DOH states that it identified the Office of Grants Management ("OGM"), the Community Health Administration ("CHA"), and the Office of the Director ("OD") as the offices in which the requested records are likely to be found as such offices had programmatic responsibility for the grant to Metropolitan DC Health Consortium. DOH stated that it conducted a search in two phases: emails and other forms of records.

With respect to emails, through the Office of the Chief Technology Officer, DOH searched the email accounts, or "mailboxes," of the ten DOH individuals which Appellant identified in the FOIA Request using the terms "Instant Recess," "[the named employee]," "evaluator," "Health and Human Services," and "DHHS.gov."

With respect to other forms of records, DOH identifies, as the form in which the requested records are or would be maintained, email, electronic word processing or spreadsheet formats,

electronic files in the federal Block Grant Management System, and paper. DOH indicates that the ten individuals identified searched "across their management span," which "included paper and electronic records." DOH also indicates that records "found in OGM, CHA, and OD were also searched. Searches included network drives as well as individual drives."

With respect to the named employee which Appellant identified as the evaluator of the grant, both the CHA Deputy Director of Operations and the supervisor of the named employee indicate that the named employee did not perform any work with respect to the grants and has no records for Metropolitan DC Health Consortium; has no knowledge of the work which Metropolitan DC Health Consortium performed or failed to perform on the grant; and did not communicate with the Department of Health and Human Services regarding Metropolitan DC Health Consortium.

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 involves the same grant which was the subject of Freedom of Information Act Appeal 2014-53. In Freedom of Information Act Appeal 2014-53, we stated:

> By way of background, DOH indicates that Metropolitan DC Health Consortium, the company owned by Appellant, and the District are parties to ongoing litigation arising from the grant made by DOH to Metropolitan DC Health Consortium and the response to a previous FOIA request.

Here, Appellant appears to state three challenges. First, Appellant complains that DOH has not provided to him any records which are responsive to the FOIA Request, that is, that contain any "reference to [the named employee] nor any evaluator nor any evaluations." Second, Appellant contends that DOH should state that no evaluation was made if that is the case. Third, Appellant suggests that "evaluations and the evaluator's name and information may be contained" in the withheld records. We consider the challenges in reverse order.

The third challenge suggests that responsive information may be contained in the withheld records. Without addressing specifically the exemptions which DOH has claimed, which we believe to be justified, the records which were withheld relate to the processing of Freedom of Information Act Appeal 2014-53 or the FOIA Request and are nonresponsive to the FOIA Request. As indicated in the second challenge, Appellant contends that DOH should state that no evaluation was made if that is the case. Under DC FOIA, an agency is only required to provide responsive records, state that no responsive records exist, or indicate the reason why records are withheld or redacted, as the case may be. While agencies often will go past the strict statutory requirements and provide additional information regarding the underlying request, and are encouraged to do so in appropriate circumstances, this information is not mandated under the statutory requirements. Here, where Appellant is engaged in litigation with the District regarding the subject grant, the more appropriate forum to obtain answers to such interrogatories is in the course of the litigation.

Although Appellant has not framed the issue as such, as in Freedom of Information Act Appeal 2014-53, we believe that, as the final challenge, Appellant has placed the adequacy of the search in issue. For the convenience of Appellant, we will re-state the relevant principles which we set forth in Freedom of Information Act Appeal 2014-53.

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 conducting the search, we note that DOH used the same approach as it did in Freedom of Information Act Appeal 2014-53, where we found the search to be adequate.

As an initial step in the search, an agency needs to identify the divisions or offices in which the requested records are likely to be found. Here, as is appropriate and as it did in Freedom of Information Act Appeal 2014-53, DOH identified the Office of Grants Management ("OGM"), the Community Health Administration ("CHA"), and Office of the Director ("OD") as the likely offices as such offices had programmatic responsibility for the grant to Metropolitan DC Health Consortium. As DOH has indicated and as in Freedom of Information Act Appeal 2014-53, it conducted a search in two phases: emails and other forms of records.

As set forth above, with respect to emails, through the Office of the Chief Technology Officer, DOH searched the email accounts, or "mailboxes," of the ten DOH individuals which Appellant identified in the FOIA Request. DOH used the terms "Instant Recess," "[the named employee]," "evaluator," "Health and Human Services," and "DHHS.gov." As we stated in Freedom of Information Act Appeal 2014-53 and as DOH confirms in its response here, communications with DHHS regarding evaluation of the grant project would be expected to be made by the higher-level officials of DOH and it is such officials whose email accounts were selected for search. The correctness of the selection would be confirmed by the identification of these individuals in the FOIA Request by Appellant, who was dealing with DOH regarding the grant and would have knowledge of the agency employees likely to have had such communications.

As we have stated in past decisions, including Freedom of Information Act Appeal 2014-53, an administrative appeal under DC FOIA is a summary process and we have not insisted on the same rigor in establishing the adequacy of a search as would be expected in a judicial proceeding. In this regard, unlike judicial proceedings, we have not required the submission of search terms to establish the adequacy of a search. Nevertheless, as in Freedom of Information Act Appeal 2014-53, DOH has provided us with the search terms that it used. We have examined the search terms used, but it is unclear whether the search using these terms was in the conjunctive or subjunctive, that is, whether the search would produce results only where all terms were found in a single email or whether the search would produce results where any one, but not all, terms were found in a single email. Here, DOH has established by statements of DOH employees, including a direct supervisor, that the named employee which Appellant

identifies as an evaluator was not involved in the evaluation of the grant or, for that matter, in any portion of the grant administration. Therefore, a search which included the name of such employee as a necessary term would have excluded potentially responsive results. Accordingly, while a search using the terms in the subjunctive would have been adequate, we do not believe that a search in the conjunctive would be so. Thus, if a search in the conjunctive was made, we direct that a new search for emails be made which does not include the named employee as a search term. We believe that a search, using the terms "Instant Recess" and "evaluation," in the conjunctive, would be adequate.

With respect to records other than emails, DOH identified the types of records, other than emails, in which the requested records would be maintained: electronic word processing or spreadsheet formats, electronic files in the federal Block Grant Management System, and paper. DOH indicates that ten individuals identified made a "search across their management span" and "[s]earching includes the paper and electronic records." DOH stated that [s]earches included network drives as well as individual drives." In Freedom of Information Act Appeal 2014-53, we interpreted, and DOH confirmed pursuant to our decision, the phrase "search across their management span." Such a search is conducted as follows. First, DOH searches its federal Block Grant Management System for responsive records. Second, having identified the appropriate individuals whose email accounts were to be searched, the common or personal electronic drives of those individuals (depending upon the manner in which records were maintained) are searched. Third, the paper files within the physical offices where such individuals were located are searched. Here, as in Freedom of Information Act Appeal 2014-53, we find the search conducted in this manner was adequate.

In its final response to the FOIA Request, DOH stated that responsive records had been sent by email or "were previously provided to you in response to other FOIA requests or in response to discovery requests in the lawsuit that you and Metropolitan DC Health Consortium filed against the District of Columbia." While we have considered the disclosures in successive FOIA requests to be cumulative, we have held that the provision of records in another proceeding is not sufficient to satisfy a FOIA request. In Freedom of Information Act Appeal 2011-5, we stated:

> However, the litigation and the FOIA Requests are separate matters. The production of documents in a separate matter does not satisfy a proper request for records under DC FOIA. We have held that the existence of pending litigation is itself insufficient to justify the withholding of records.[1]

Despite the fact that, as a technical matter, DOH should have provided the records to Appellant, it seems likely that Appellant is not seeking records to which Appellant has had access in separate litigation with the District. Therefore, if Appellant is seeking records which are responsive but which DOH identifies as having been provided in litigation with the District, Appellant should so notify DOH and DOH shall make them available. However, DOH need only provide such records as are responsive to the FOIA Request.[2]

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[1] *See also* Freedom of Information Act Appeal 2012-71 ("DC FOIA does not permit the withholding of records based simply upon the determination or belief that a requester already has such records.")

[2] We note that Appellant has characterized the records which were previously provided as

Conclusion

Therefore, the decision of DOH is upheld in part and remanded in part. As set forth in more detail above:

1. If the search for emails was made using the specified search terms in the conjunctive, we direct that a new search be made which does not include the named employee as a search term.

2. If Appellant is seeking records which are responsive but which DOH identifies as having been provided in litigation with the District, Appellant should so notify DOH and DOH shall make them available.

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: Phillip Husband, Esq.

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nonresponsive.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-63/82

June 20, 2014

David A. Fuss, Esq.

Dear Mr. Fuss:

This letter responds to your administrative appeals to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated May 23, 2014 (collectively, the "Appeal"). You, on behalf of your clients (collectively, the "Appellant"), assert that the Office of the Chief Financial Officer ("OCFO") improperly withheld records in response to your request for information dated April 29, 2014 (the "Request"). The administrative appeals have been consolidated for purposes of response by OCFO and decision by this office.

Background

Appellant's Request sought, for twenty real properties owned by twenty different owners, which were listed in an attachment to the FOIA Request, "the worksheets . . . that were used to derive the 'Vision Dir/Mark Cap Rates'" (the "Worksheets"). The Request was addressed to the Chief Assessor, Real Property Tax Administration, Office of Tax and Revenue. The Request did not reference DC FOIA. In response, by letter dated May 15, 2014, OCFO, citing D.C. Official Code § 2-534(a)(3) and (4), stated that it was withholding the Worksheets based upon the deliberative process privilege. The response was sent by the Chief Assessor and, stating that "[w]hile your letter does not expressly reference the District's Freedom of Information Act," set forth the rights of appeal under DC FOIA, including the procedure for filing an administrative appeal.

On Appeal, Appellant challenges the denial of the Request, filing a separate appeal for each of the real properties and its corresponding owner. As Appellant makes the same legal argument in each separate appeal, we have consolidated the appeals for purposes of response by OCFO and decision by this office. Appellant sets forth two main arguments.

First, Appellant asserts that the requested records are required to be disclosed under D.C. Official Code § 47-821(d)(2) and that DCMR § 9-309.2 and 9-309.3 set forth the procedure under which records under D.C. Official Code § 47-821(d)(2) are to be obtained, that is, by making a FOIA

request. Appellant asserts further that there are no exemptions applicable to D.C. Official Code § 47-821(d)(2) and OCFO does not have the authority to provide for exemption by rule.

> D.C. Official Code § 47-821(d)(2)(B)(i) provides that 'the Mayor shall permit a valuation record of the real property to be inspected by [a]n owner or authorized agent of the property that is the subject of the valuation record.' 9 DCMR § 309.3 directs property owners or authorized agents seeking to obtain 'valuation records' to file a Freedom of Information Act request pursuant to D. C. Code § 2-531 *et seq*. with the Deputy Chief Financial Officer. In other words, the regulation promulgated by OTR for the purposes of complying with § 47-821(d)(2)(B)(i) adopts the procedural mechanism established by the FOIA statute. In contrast to the FOIA statute, however, neither the code provision (§ 47-821(d)(2)(B)(i)) or the regulations (9 DCMR § 309.2 and 309.3) provide for an exemption from disclosure of 'valuation records.'

Second, Appellant asserts that, notwithstanding the inapplicability of the DC FOIA exemptions, the Worksheets are not protected by the deliberative process privilege. In order to satisfy the deliberative process privilege, according to case law which it quotes, a record must "'reflect the opinions of the writer rather than the policy of agency'" and must "'reflect [] the give-and-take of the consultative process.'" [citations omitted]. Appellant contends that the Worksheets are not deliberative.

> First, the document reflects no 'personal opinions' as to what the Tax Year 2015 office capitalization rates should be. Rather, the document simply constitutes the mathematical calculations used by OTR to calculate the 'Cap Rates' for the Subject Property listed in [an attachment]. Second, the document in no way reflects the 'give-and-take' as to what the OTR Tax Year 2014 office capitalization rates should be. Again, the document is simply a mathematical calculation and does not detail how this particular capitalization rate was used by OTR. In fact, OTR has published results of the calculations contained in this document in its Tax Year 2015 Pertinent Data Book.

In its response, OCFO reaffirms its position. First, OCFO states that the Worksheets are not valuation records subject to disclosure under D.C. Official Code § 47-821. Citing legislative history for support, it maintains that valuation records "concern information provided to OTR concerning the property by the owner." However, a Worksheet

> is not information provided by the property owner. Rather, the Worksheet is a document prepared by OTR for the purpose of developing the assessed value of a property as well as similar properties, for the purpose of real estate taxation.

Second, OCFO asserts that the Worksheets are predecisional, deliberative data analyses which are exempt in whole from disclosure based upon the deliberative process privilege under D.C. Official Code § 2-534(a)(4).

> The capitalization rate for a particular class of property is developed through an evaluation of indicated capitalization rates from arm's-length sales of properties and review of market surveys and other pertinent information. The Worksheets are used to

> develop the indicated capitalization rates from market sales. . . . The indicated rates are then reviewed by the Chief Appraiser and his deputies in combination with additional survey information in order to develop the capitalization rates that will actually be used to develop real property assessments. Because a uniform capitalization rate is applied in assessing each type of office building, such as trophy, class A, B or C, the indicated rate shown in the Worksheet would not necessarily be used to compute the assessed value of the building from which it was developed.

Third, OCFO asserts that the Worksheets are exempt from disclosure as law-enforcement investigatory files because:

1. The Worksheets are used to develop Tax Year 2015 assessed values and relate to current enforcement proceedings, so that "disclosure of those records could interfere with those proceedings."

2. Disclosure of the Worksheets may reveal enforcement methods and techniques.

OCFO responded to an invitation to supplement the administrative record to address the applicability of other real property disclosure provisions, particularly D.C. Official Code § 47-823(b) and DCMR § 9-309.2. Initially, it sets forth that the "Worksheet is the capitalization analysis for certain real properties that have been recently sold" and "is used to derive . . . capitalization rates used in mass appraisal." In addition, it states: "This Worksheet is not used solely to derive the value of a single property . . . This Worksheet was not used to derive the assessed value of any single property under appeal . . ."

As to D.C. Official Code § 47-823(b) and DCMR § 9-309.2, OCFO states that these provisions

> refer[] to notes and memoranda showing how OTR actually computed the assessed value of a particular property . . .
>
> Inasmuch as the Worksheet is used in the development of appropriate capitalization rates to be used in valuing various types of real property under a mass appraisal methodology, the Worksheet does not constitute a note or memorandum relating to the assessment of the particular piece of the property on which is based. . . . The actual assessment is computed using the capitalization rate determined for the particular category of office property (such as trophy class A, B or C) to which the properties are assigned.[1]

Discussion

[1] In response to the invitation to address the relationship of the term "worksheet" in D.C. Official Code § 47-825.01(f-1)(2A) to the withheld records, OCFO explains that this "worksheet" indicates the changes in the proposed assessed value as a result of a petition for administrative review (a so-called "first level assessment appeal").

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).

A threshold question is whether this office has the authority to consider this matter. The Request did not specify or reference that the request for records was being made under DC FOIA and Appellant contends that the records are required to be disclosed under D.C. Official Code § 47-821. D.C. Official Code § 47-821 confers a statutory right to inspect records which is separate from DC FOIA and, absent any other circumstances, would be enforced outside the DC FOIA appeals process. In *SDC Development Corp. v. Mathews*, 542 F.2d 1116 (9th Cir. 1976), the Court held that the Freedom of Information Act did not apply where Congress enacted a separate statutory scheme for the access and payment of records stored in an electronic records system at the National Library of Medicine.[2] *See also Tax Analysts v. United States Dep't of Justice*, 845 F.2d 1060 (D.C. Cir. 1988), aff'd 492 U.S. 136 (1989), citing, with approval, the holding in *SDC Development Corp.*[3] In Freedom of Information Act Appeal 2011-34, we held that an agency was not required to provide the requested records where, by statute, another agency was required to provide such records. However, in this case, OCFO, the office which is the agency charged with providing access to the records under D.C. Official Code § 47-821 through its constituent division, the Office of Tax and Revenue, processed the Request as a request under DC FOIA although it was not so designated. Moreover, by filing the Appeal, Appellant has consented to the treatment of the Request as a request under DC FOIA. Therefore, in this limited circumstance, we find that we have the authority to consider this matter.

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[2] "[T]he statutory mandate of the National Library may be substantially impaired if it is not permitted to charge for use of its retrieval system as expressly authorized by the National Library of Medicine Act. The Supreme Court only recently reiterated that 'when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.' [citation omitted." *SDC Development Corp. v. Mathews*, 542 F.2d 1116, 1120 (9th Cir. Cal. 1976).

[3] "[A] computer database of medical information need not be disclosed in response to the FOIA request because it was already available from the agency through another statutorily prescribed means." *Id.* at 1065.

As set forth above, Appellant asserts that it has an unrestricted right to inspect the requested records under D.C. Official Code § 47-821 and that the exemptions under D.C. Official Code § 2-534 are not applicable to any records which must be furnished under D.C. Official Code § 47-821. We consider first whether D.C. Official Code § 47-821 or any other statutory provisions other than D.C. Official Code § 2-532 provides a right to inspect the Worksheets.

D.C. Official Code § 47-821(d)(2) provides, in pertinent part:

> (2)(A) . . . For purposes of this section, the term "valuation records" means:
> (i) Information regarding private appraisals, actual building costs, rental data, or business volume;
> (ii) Income or expense forms; and
> (iii) Rent rolls.
> (B) Notwithstanding subparagraph (A) of this paragraph, the Mayor shall permit a valuation record of a real property to be inspected by:
> (i) An owner or authorized agent of the property that is the subject of the valuation record . . .

In order for D.C. Official Code § 47-821(d)(2) to apply, the requested records must be "valuation records" within the meaning of subsection (d)(2)(A). The records sought are worksheets used to compute capitalization rates used in assessing real property. However, we do not interpret capitalization rates to fall within any of the categories of records constituting valuation records. Other than private appraisals, all of the other valuation records relate to factual data. The only valuation records which involve matters of judgment are private appraisals. However, we interpret private appraisals as those which are prepared by nongovernmental entities. While capitalization rates are calculated as part of the appraisal process, the Worksheets have been prepared by the government.

Sua sponte, we have considered the possibility that other real property disclosure provisions, particularly D.C. Official Code § 47-823(b) and DCMR § 9-309.2, apply to the Worksheets.

D.C. Official Code § 47-823(b) provides:

> (b) The estimated assessment roll, together with all maps, field books, assessment-sales ratio studies, surveys, and plats, shall be open to public inspection during normal business hours. In addition, *any notes and memorandums relating to the assessment of his real property*, or a statement clearly indicating the basis upon which his real property has been assessed, *shall be open to inspection by the owner or his designated representative* during normal business hours. Provision shall be made to furnish copies of all material to any person, upon request, at the lowest charge which covers cost of making such copies. [emphasis added].

DCMR § 9-309.2, which implements D.C. Official Code § 47-823(b), provides:

> Records of individual real properties, including any notes, memoranda, and statement(s) indicating the basis upon which the real estate has been assessed, shall be open for

> inspection by the owner or the owner's duly authorized representative during normal business hours; Provided, that an owner may be required to give the Deputy Chief Financial Officer notice of his or her intention to inspect records at least twenty-four (24) hours before the inspection.

D.C. Official Code § 47-823(b) provides to an owner of real property the right to inspect "any notes and memorandums relating to the assessment of *his* real property [emphasis added]." We agree with OCFO that this applies to notes and memoranda which were used to value "a particular parcel of property." In its initial response to the Appeal, OCFO stated that "the Worksheet is a document prepared by OTR for the purpose of developing the assessed value of *a property as well as similar properties* [emphasis added]," indicating that a Worksheet corresponding to a real property may be used in assessing the value of that real property. Similarly, OCFO stated that "the indicated rate shown in the Worksheet would not *necessarily* be used to compute the assessed value of the building from which it was developed [emphasis added]." Even in its supplement, OCFO stated that the "Worksheet is not used *solely* to derive the value of a single property [emphasis added]." Thus, to the extent that a Worksheet is used to derive the value of a single property, D.C. Official Code § 47-823(b), and its implementing rule, DCMR § 9-309.2, would apply. However, in the case of the Appeal, despite the foregoing suggestions to the contrary, OCFO states unambiguously: "This Worksheet was not used to derive the assessed value of any single property under appeal . . ." Instead, the Worksheets were used to derive capitalization rates for each designated class of real property under a mass appraisal methodology. Therefore, in the case of each real property for which an appeal has been filed, it is the class capitalization rate which has been utilized rather than, where it has been derived, the more specific capitalization rate applicable to the real property. While it may seem to be counter-intuitive to use a mass capitalization rate when a more specific rate is available, even if we were inclined to do so, DC FOIA provides no warrant to second-guess the real estate valuation methods chosen by OCFO. Thus, as the class capitalization rate was applied to assess each real property for which an appeal has been filed rather than the more specific capitalization rate from a Worksheet, D.C. Official Code § 47-823(b) does not apply to the Worksheets.

Accordingly, as there are no specific real property disclosure provisions which apply to the Worksheets, it is not necessary to this decision to decide whether the exemptions in D.C. Official Code § 2-534 can be applied to preclude inspection provided under such provisions.

Nonetheless, as OCFO has processed the Request as a request under DC FOIA and has identified responsive records, we will consider the applicability of the exemptions from disclosure which OCFO has claimed. The first exemption which OCFO claims is 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 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).

Under applicable law, 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).

In the case of the Appeal, the Worksheets reflect analyses prepared for review and consideration by senior officials, here the Chief Appraiser and his deputies. Moreover, as OCFO indicates, the capitalization rates in the analyses are combined with additional survey information in order to develop the final capitalization rates for each class of real property to be assessed. The preparation of the Worksheets is part of a deliberative process which ultimately results in the adoption of capitalization rates for each designated class of real property. The preparer submits the Worksheet for further review, consideration, and revision. Our prior decisions reflect that the submission of recommendations to a final decision-maker are part of the deliberative process which results in a final agency decision. *See*, e.g., Freedom of Information Act Appeal 2014-25 (report which was an analysis and recommendation regarding a proposed action to be taken by the District of Columbia Retirement Board); Freedom of Information Act Appeal 2014-06 (recommendations of a hiring panel to hiring official); Freedom of Information Act Appeal 2012-53 (evaluations by six-member panel of applications for licenses for marijuana cultivation centers and for marijuana dispensaries submitted by panel to deciding official).

Appellant characterizes each of the Worksheets as comprising "simply a mathematical calculation." We disagree. The derivation of a capitalization rates involves judgments and evaluations as to the selection and application of data, which judgments and evaluations result in the proposed rates which are submitted for review. As such, the material in the Worksheet does not constitute factual material which must be disclosed. *See*, e.g., Freedom of Information Act Appeal 2014-25 ("[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."); Freedom of Information Act Appeal 2014-12 ("to the extent that the record may be factual, the 'facts' selected are a part of the analysis provided and are connected to the deliberative nature of the entry."); Freedom of Information Act Appeal 2012-49 ("employee was involved in an exercise of judgment in both selecting and characterizing conditions which she observed . . . [and] in interviewing and recording her interpretation of the answers of circus staff.").

Accordingly, we find that the Worksheets are exempt from disclosure. In light of such conclusion, it is not necessary to consider the other claims of exemptions by OCFO.

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: Bazil Facchina, Esq.
Laverne Lee
Alan Levine, Esq.
Robert McKeon, Esq.
Angela Washington

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-83

June 10, 2014

Tanaz Moghadam, Esq.

Dear Ms. Moghadam:

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 May 30, 2014 (the "Appeal"). You, on behalf of two clients ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated January 17, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought "reports, statements (whether by witnesses, complainants or any other person), records, forms (e.g., PD Form 119), or any other documents related to" a complaint filed by a named individual about an "alleged incident." Appellant provided information about the complainant, the date and nature of the alleged incident, the responding officers, and the "Incident-Based Event Report." Appellant also indicated that requested records were needed for a disciplinary hearing regarding the clients, who are District government employees. In response, by email dated May 17, 2013, MPD provided responsive records, but redacted "Investigative/Incident Reports" based on the privacy exemption under D.C. Official Code § 2-534 (a)(3)(C).

On Appeal, Appellant challenges the redaction of the statements of the complainant in the investigative reports.

> An individual's privacy interest is sufficiently protected when the 'information that serves to identify the persons involved or the events described' is redacted. . . . Here the redaction of the complainant's statements that do *not* contain any names, addresses, or other information from which the complainant's identity can be discovered, is inappropriate and misconstrues the privacy exemption under FOIA.

In response, dated June 10, 2014, MPD reaffirmed its position.

> Ms. Moghadam seeks documents concerning an identified government employee's complaint of a sexual assault. Although the identity of the employee is in the event report, release of the details of the complaint would surely invade the privacy of the employee who has an expectation that such complaints would not be made public. Additionally, other persons identified in the complaint, including Ms. Moghadam's clients, have an expectation of privacy especially in the mere mention of their names in connection with a possible sexual offense. It is for this reason that the names of the involved persons were redacted. An allegation of a sexual offense is an extremely sensitive matter and release of any identifying information and facts concerning the allegation would be stigmatizing. . . . As there is no discernible public interest in the release of the withheld information, the privacy interest of the complainant and others involved is maintained.

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 question is whether MPD may redact the statements of complainant and details of an alleged incident pertaining to her because disclosure would constitute a clearly unwarranted invasion of personal privacy exempt from disclosure under D.C Official Code § 2-534(a)(2). [1]

[1] D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than

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 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). Here, the named individual is both the victim and the complainant.

> 'The personal privacy protected by Exemption[] . . . 7(C) is implicated anytime revelation of the contents of information would 'subject the person to whom they pertain to embarrassment, harassment, disgrace, loss of employment or friends.'' *Holy Spirit Association for the Unification of World Christianity v. Federal Bureau of Investigation*, 221 U.S. App. D.C. 221, 683 F.2d 562, 564 (D.C.Cir.1982) (MacKinnon, J., concurring)(quoting *Brown v. Federal Bureau of Investigation*, 658 F.2d 71, 75 (2d Cir.1981)). There is no question that such privacy interests of both the complainant and others whose names appear in the FBI records are implicated here.

Gabrielli v. United States Dep't of Justice, 594 F. Supp. 309, 312 (N.D.N.Y 1984).

Among others besides a complainant, an individual who is a victim 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).

Appellant argues that the privacy interest is limited to names, addresses, and other identifying information in government records. However, the principal reported case which Appellant cites clearly indicates that names, addresses, and other identifying information are only examples of the information to which a privacy interest attaches and that, as the portion of such case which Appellant quotes states, "information concerning his or her person" is covered as well.

> The privacy interest in the FOIA balancing analysis 'encompasses the individual's control of information concerning his or her person,' *including* [emphasis added] names, addresses, and other identifying information. [citations omitted). Moreover, individuals have a privacy interest in personal information even if it is not of an embarrassing or intimate nature.

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under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). As the administrative record in this case indicates that the incident involves a criminal matter, the exemption here is asserted under, and would be judged by the standard for, Exemption (3)(C).

District of Columbia v. FOP, 75 A.3d 259, 265-266 (D.C. 2013). The notion that the nature of the privacy interest is as limited as Appellant urges is not supported by case law or our past decisions.

Here, we find that there is a sufficient personal privacy interest in the details of the alleged incident and any statements which the complainant has made. Moreover, as the complainant has been identified, redaction of her identity alone will not protect her personal privacy interest in such details and statements.[2]

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

Appellant states that the record is needed in connection with an administrative proceeding. However, disclosure is not evaluated based on the identity of the requester or the use for which the information is intended. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004); *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 771 (1989). As the administrative record does not otherwise indicate that the conduct of MPD is in question, it does not appear that the disclosure of the records will contribute anything to public understanding of the operations or activities of the government or the performance of MPD. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Thus,

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[2] Appellant uses the phrase "alleged incident," indicating a disposition to contest the claims made regarding the two clients. However, the accuracy of the statements made by the complainant is not a factor. In this regard, the court in *Gabrielli* stated: "The Court simply is unable to conclude that the FOIA does not protect the privacy of all persons who are sources of information. To hold the complainant here to have waived his or her privacy rights by lodging an unfounded complaint might well set a bad precedent. Persons who suspect criminal activity, but who have no hard and fast proof, could well be deterred from providing to law enforcement authorities what may prove to be vital information for fear that their names would be released to the parties against whom they provided information if their suspicions ultimately prove groundless. The Court therefore declines to create a privacy exception in cases where the information provided to law enforcement authorities was knowingly false." *Gabrielli v. United States Dep't of Justice*, 594 F. Supp. 309, 312-313 (N.D.N.Y 1984).

as this is not a case involving the efficiency or propriety of agency action, there is no public interest involved.

> In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure. See *Ray*, 112 S. Ct. at 548-50; *Dunkelberger*, 906 F.2d at 781. In this case, however, where we find that the request implicates no public interest at all, "we need not linger over the balance; something … outweighs nothing every time." *National Ass'n of Retired Fed'l Employees v. Horner*, 279 U.S. App. D.C. 27, 879 F.2d 873, 879 (D.C. Cir. 1989); see also *Davis*, 968 F.2d at 1282; *Fitzgibbon v. CIA*, 286 U.S. App. D.C. 13, 911 F.2d 755, 768 (D.C. Cir. 1990).

Beck v. Department of Justice, 997 F.2d 1489, 1494 (D.C. Cir. 1993).

Therefore, the redaction of the records in question was proper.

Conclusion

Therefore, the decision of MPD 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 District of Columbia Superior Court.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-84

June 20, 2014

Mr. Will Sommer

Dear Mr. Sommer:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated May 28, 2014 (the "Appeal"). You ("Appellant") assert that the Board of Elections ("BOE") improperly withheld records in response to your request for information under DC FOIA dated June 3, 2014 (the "FOIA Request).

Background

Appellant's FOIA Request sought the Office of Campaign Finance ("OCF") audits for the Sulaimon Brown and Vincent Gray mayoral campaigns and all communications related to the OCF investigations regarding these campaigns.

By letter emailed May 21, 2014, BOE denied the FOIA Request, stating that the withholding of the requested records was based on the exemption from disclosure under D.C. Official Code § 2-534(a)(3)(A)(i) for investigatory records compiled for law enforcement purposes whose release would interfere with enforcement proceedings. BOE stated that the requested records were compiled as part of an ongoing investigation into the Gray campaign, "which may result in an enforcement proceeding." BOE also indicates that the report for the audit of the Gray campaign is still in draft form.

Appellant challenged the denial of the FOIA Request with respect to the communications related to the audit. Appellant references the stay, issued by this office, of the consideration of Freedom of Information Act Appeal 2014-31 where the BOE

> wrote that a FOIA appeal about the audits sent to OCF had been instead sent to DCBOE's FOIA officer. From that appeal response, we can see that there *does* exist communication at DCBOE related to the audits whose release would not jeopardize any law enforcement investigation. . . . their omission from the FOIA response demonstrates that DCBOE's FOIA officer clearly incorrectly applied the law enforcement exemption and rais[es] questions about what other documents have been wrongfully withheld.

In its response, dated June 17, 2014, BOE reconsidered and revised its position in part by providing to Appellant some of the responsive records, but reaffirms its position as to most of the records withheld. BOE lists 16 records withheld.[1] As to 15 of the records, BOE bases its withholding on the deliberative process privilege under D.C. Official Code § 2-534(a)(4), stating that "[t]hese documents were generated as part of a continuous process of Board decision-making concerning how to respond to on-going inquiries regarding the Gray for Mayor audit ('the Audit')." As to the remaining record, "containing an attachment that contains a chronology of events and news articles related to the Audit," BOE claims the exemption under D.C. Official Code § 2-534(a)(3) for redactions on the record, stating: "The chronology outlines interactions between OCF and the United States Attorney for the District of Columbia, as well as internal events at OCF pertaining to the investigation concerning the Audit." Pursuant to an invitation to supplement the administrative record, BOE states:

> D.C. Official Code § 2-534(a)(3)(A)(i) is the basis for the exemption. As noted, the portions of the document that were redacted discuss interactions between OCF and the United States Attorney for the District of Columbia, as well as internal events at OCF pertaining to the investigation concerning the Audit. The entire document was compiled as part of OCF's ongoing investigation regarding the Audit, which may result in an enforcement proceeding, and is part of OCF's investigatory file regarding the Audit. The release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding would constitute interference with the enforcement proceeding. *See Fraternal Order of Police, Metropolitan Labor Committee v. District of Columbia*, 82 A.3d 803 (D.C. 2014)("Fraternal Order of Police")(citing *Bevis v. Department of State*, 801 F.2d 1386, 1388 (D.C.Cir.1986)).

BOE has provided for *in camera* review a copy of the unredacted records of the 15 records withheld on the basis of the deliberative process privilege. BOE has also provided a copy of the other record, as redacted.

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

[1] Some of the records are grouped, such as email threads or attachments to the main email.

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 of all but one of the records is based upon the deliberative process 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 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.

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).

In Freedom of Information Act Appeal 2012-43, the appellant argued that emails reflecting public relations strategy are not exempt under the deliberative process privilege. In upholding the assertion of the deliberative process privilege, we stated:

> [T]he formulation of a communications strategy and development of materials associated with that strategy, including talking points, briefing books, and press releases, are encompassed within policy decisions subject to the deliberative process privilege. *See*, e.g., *Thompson v. Department of Navy*, 1997 WL 527344, 5 (D.D.C. 1997)("the process by which the Navy formulates its policy concerning statements to and interactions with the press" subject to deliberative process privilege); *Judicial Watch, Inc. v. United States Dep't of Commerce*, 337 F. Supp. 2d 146, 174 (D.D.C. 2004)("talking points and

> recommendations for how to answer questions" properly withheld.); *Williams v. United States Dep't of Justice*, 556 F. Supp. 63, 65 (D.D.C. 1982)("briefing papers prepared for the Attorney General prior to an appearance before a congressional committee in executive session [are] clearly deliberative.").

See also Freedom of Information Act Appeal 2013-11R (emails pertaining to advice on political matters or on the response to media inquiries exempt under the deliberative process privilege).

Here, fifteen of the withheld records relate to discussions and proposals regarding responses to media inquiries and inquiries from a councilmember regarding the audit of the campaign of Vincent Gray. Thus, they are exempt from disclosure under the deliberative process privilege.

The remaining record under consideration has been redacted based upon the exemption under D.C. Official Code § 2-534(a)(3)(A)(i).

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.[2]

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) 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.*

[2] *See* Freedom of Information Act Appeal 2011-62 and Freedom of Information Act Appeal 2013-69.

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).

In addition, the exemption cannot be upheld "unless it relates to a 'concrete prospective law enforcement proceeding,' *see NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 232, 98 S. Ct. 2311, 57 L. Ed. 2d 159 (1978) . . ." *Juarez v. DOJ*, 518 F.3d 54, 59 (D.C. Cir. 2008). For purposes of the applicability of the exemption, it is sufficient if the enforcement proceedings are "reasonably anticipated." *Sussman v. United States Marshals Serv.*, 494 F.3d 1106, 1114 (D.C. Cir. 2007) (quoting *Mapother v. DOJ*, 3 F.3d 1533, 1540 (D.C. Cir. 1993).

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]

Here, in its initial response to the Appeal, BOE stated that the redacted portions of the chronology related to interactions with the United States Attorney and the internal events at the Office of Campaign Finance. It is not evident from this description that disclosure would interfere with enforcement proceedings. Moreover, although it was not addressed specifically in the initial response to the Appeal, BOE stated in its response to the FOIA Request that the investigation "may result in an enforcement proceeding." However, in Freedom of Information Act Appeal 2013-10, we stated that "[a] mere possibility is not sufficient." *See also* Freedom of Information Act Appeal 2013-69.

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[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, Freedom of Information Act Appeal 2014-07, Freedom of Information Act Appeal 2014-30, and Freedom of Information Act Appeal 2014-50.

[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)."); *FOP v. District of Columbia*, 79 A.3d 347, 355 (D.C. 2013) ("When putting forth its reasons for claiming that specific documents are exempt, a government agency must do so in a manner that 'permit[s] adequate adversary testing of the agency's claimed right to an exemption, and enable[s] the [trial] [c]ourt to make a rational decision whether the withheld material must be produced without actually viewing the documents themselves . . . [and] without thwarting the [claimed] exemption's purpose.'[citing *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 861 (D.C. Cir. 1980)..."

We invited BOE to supplement the administrative record to address, as applicable, the manner in which disclosure of the interactions with the United States Attorney and the internal events at the Office of Campaign Finance would interfere with enforcement proceedings. In response, after re-stating that the redactions related to such interactions and internal events, BOE stated, as more fully set forth above, that the "entire document was compiled as part of OCF's ongoing investigation," that the investigation "may result in an enforcement proceeding," and "[t]he release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding would constitute interference with the enforcement proceeding." BOE cited *Fraternal Order of Police, Metropolitan Labor Committee v. District of Columbia*, 82 A.3d 803 (D.C. 2014), as authority.

On such points, *Fraternal Order of Police* states, in pertinent part:

> A 'blanket exemption,' that is, 'an exemption claimed for all records in a file simply because they are in a file," is impermissible under the investigatory records exemption. [citation omitted]. But, 'courts [may] make generic determinations that with respect to particular kinds of enforcement proceedings, disclosure of particular kinds of investigatory records . . . would generally interfere with enforcement proceedings.' [citation omitted].
>
> Under a generic approach, an agency justifies its non-disclosure of documents as investigatory records based on a functional category (or categories) that 'allows the court to trace a rational link between the nature of the document and the alleged likely interference.' [citation omitted]. In that regard, the agency has a 'three-fold task'; it must: (1) 'define its categories functionally,' (2) 'conduct a document-by-document review in order to assign documents to the proper category,' and (3) 'explain to the court how the release of each category would interfere with enforcement proceedings. [citation omitted]. An agency must sustain its burden 'by identifying a pending or potential law enforcement proceeding or providing sufficient facts from which the likelihood of such a proceeding may reasonably be inferred.' [citation omitted]. 'If the generic index submitted by the government is not sufficient to sustain the [investigatory records exemption], then the [trial] court may request more specific, distinct categories so that it may more easily determine how each category might interfere with enforcement proceedings'; '[t]he chief characteristic of an acceptable taxonomy should be functionality — that is, the classification should be clear enough to permit court to ascertain how each . . . category of documents, if disclosed, would interfere with the investigation." [citation omitted]..

Id. at 815-816.

BOE argues that release of any information in an investigatory file prior to the completion of a contemplated enforcement proceeding would constitute interference with the enforcement proceeding. However, this construction is the blanket exemption which the *Fraternal Order of Police* states is impermissible. We have so indicated in our decisions. In Freedom of Information Act Appeal 2012-64, we found that MPD did not sustain its burden of proof where

> [i]t 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 or that it would deprive a person of a right to a fair trial or an impartial adjudication. In this case, MPD has not explained how the interference or deprivation would occur (the FOIA office has not indicated that it has seen the records).

In accord, Freedom of Information Act Appeal 2013-06 and Freedom of Information Act Appeal 2014-22.

Even under the "generic approach" which the *Fraternal Order of Police* discusses, while a general grouping of categories of records is permitted, there must still be a showing of the requisite interference. Here, the characterization of the redacted portions of the records is highly ambiguous. Internal events at the agency can be as innocuous as staffing changes or reassignments, the disclosure of which would not ordinarily interfere with enforcement proceedings. Interactions with the United States Attorney could be a communication of such staffing changes or the notification of the completion of the investigation, which latter fact has been conceded publicly by acknowledgment that there is a draft audit report. Thus, BOE has not met its burden of proof and redacted record must be disclosed in full.

However, we note that there may be a law enforcement interest here of the Office of the United States Attorney. In Freedom of Information Act Appeal 2011-62, we agreed to reconsider a decision where the interests of the Office of the United States Attorney were not represented on the record. In Freedom of Information Act Appeal 2014-07, where the interests of third party real estate developers were not represented on the record, we considered a request for reconsideration by allowing the Office of the Deputy Mayor for Planning and Economic Development to submit unredacted copies of the records withheld for *in camera* review. In Freedom of Information Act Appeal 2014-22, where the District of Columbia Fire and Emergency Medical Services Department did not state specifically how the disclosure would interfere with the law enforcement proceeding, we examined the withheld record and found that the requisite interference with the enforcement proceeding would occur. Accordingly, we will consider a request for reconsideration of this decision if BOE submits, for *in camera* review, a copy of the unredacted record, along with a statement that an enforcement proceeding is reasonably anticipated.

Conclusion

Therefore, the decision of BOE is upheld in part and reversed and remanded in part. Subject to a request for reconsideration as provided above, BOE shall provide unredacted the record identified as number 6 in its response to the Appeal and more particularly described as a chronology.

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: Terri Stroud, Esq.
Kenneth McGhie, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-85

June 18, 2014

Ms. Mary E. 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 June 12, 2014 (the "Appeal").

Your request for information under DC FOIA dated April 7, 2014 (the "FOIA Request") to the Office of the Inspector General ("OIG") sought records regarding the status and outcome of a complaint which you ("Appellant") submitted to OIG. In response, by letter emailed dated April 29, 2014, OIG provided responsive records to Appellant, with redactions based upon exemptions for personal privacy under D.C. Official Code § 2-534(a)(3)(C). On Appeal, Appellant contests the statements by witnesses in the responsive records as well as the completeness and conclusions of the investigation.

Ordinarily, we would request a response from the agency (here, OIG) in response to the allegations set forth in the Appeal. However, in this case, a response is not necessary. As we have indicated in past decisions (*see*, e.g., Freedom of Information Act Appeal 2012-26 and Freedom of Information Act Appeal 2012-60), our jurisdiction under D.C. Official Code § 2-537(a) is limited to adjudicating the sufficiency of a search for requested records or whether or not a record may be withheld pursuant to a request under DC FOIA. In this case, Appellant does not contest the adequacy of the search for requested records or redactions to the records provided, but instead submits a "rebuttal," challenging the content contained in the records produced and the manner in which the underlying investigation by OIG in response to the complaint (but not the FOIA Request) was conducted. The Appeal does not state a challenge under DC FOIA and the grievance is not within our jurisdiction to consider. Moreover, the response of OIG to the FOIA Request appears to be in compliance with the requirements of law.

Based on the foregoing, 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: Keith Van Croft, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-86

July 3, 2014

Steven M. Sushner, Esq.

Dear Mr. Sushner:

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 12, 2014 (the "Appeal"). You assert that the Office of the Chief Financial Officer ("OCFO") improperly withheld records in response to your request for information under DC FOIA dated May 7, 2014 (the "FOIA Request") by failing to respond to the FOIA Request.

Appellant's FOIA Request sought copies of tax certificates for a specified real property. When OCFO failed to provide a timely final response to the FOIA Request, Appellant initiated the Appeal.

In its response to the Appeal, dated July 2, 2014, OCFO stated:

> Our records indicate that no certificate of taxes was ever requested or issued for lot 9 in square 6125 since 2013 until the property transferred in early June 2014. We have typed up but not issued a certificate of taxes in error, dated June 26, 2014. This certificate typed up in error cannot help Mr. Sushner with the delinquent taxes owed on the property because the certificate was created after the transfer and not in response to a request for such certificate; we created the document in error through a miscommunication on how to respond to the FOIA. If Mr. Sushner wants this certificate of taxes issued after the date of transfer, a $15.00 fee is owed.

The issue raised on Appeal is the failure by OCFO to respond to the FOIA Request and such failure has been cured by July 2, 2014 response to the Appeal. 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 OCFO.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Laverne Lee
Robert McKeon, Esq.
Angela Washington

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-87

June 24, 2014

Ms. Clare Anderson

Dear Ms. Anderson:

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 June 13, 2014 (the "Appeal"). You ("Appellant") assert that the Department of Health ("DOH") improperly withheld records in response to your requests for information under DC FOIA dated May 7, 2014, and May 14, 2014 (the "FOIA Request) by failing to respond to the FOIA Request.

Appellant's FOIA Request sought records related to "an aggressive dog" at a specified address. or other guidance materials furnished to principals." DOH acknowledged the FOIA Request and stated that it was searching for records, but when the records were not provided within the statutory period, Appellant initiated the Appeal.

Appellant has informed this office that responsive records were received subsequent to the filing of the Appeal. 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: Phillip L. Husband, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-88

July 10, 2014

Kavitha Reddy, Esq.

Dear Ms. Reddy:

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 June 16, 2014 (the "Appeal"). You, on behalf of J.K. Trotter ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated May11, 2014 ("FOIA Request").

Background

Appellant's FOIA Request sought "all police records and/or incident reports generated between January 1 2011 and May 1 2014 by the Metropolitan Police Department" regarding any incidents at a specified address.

In response, MPD denied the FOIA Request based on the exemptions from disclosure for personal privacy under D.C. Official Code § 2-534(a)(2) and (3)(C). MPD indicated that while the withheld records, incident reports, "are generally public records," this does not "necessarily" obviate the privacy interests of an individual as "[i]nformation that is technically public may be 'technically obscure.'" MPD further indicated that there is a privacy interest of individuals named in the incident reports, "either as victims of a crime or as suspects in the commission of a crime," and that there is no public interest under DC FOIA in the disclosure of such reports.

On Appeal, Appellant contends principally that no individual privacy interest is implicated because, as indicated in attached records, the real property address is listed as the business address of a specified limited liability company. As to the public interest in disclosure, Appellant asserts that there is an interest in knowing whether MPD is "carrying out [its] duties in a consistent and fair manner" and "treating this entity differently."

In its response, dated July 10, 2014, MPD reaffirmed its position. MPD asserts that there is a privacy interest of any person identified in any incident record as "[s]uch persons would not necessarily want the public to know that they were identified in a law enforcement record as complainant or victim, witness or suspect." With respect to the public interest in disclosure, MPD asserts that disclosure "of any incident records would not shed light on how the

government is carrying out its responsibilities . . ." In addition, MPD notes: "The FOIA request was not limited to records concerning a business entity. Rather, the request was for any records related to a particular address." As to the feasibility of the redaction of the records, MPD states: "The request is related to a specific address and presumably only limited number of persons would have been involved in an incident, thus anonymity would not be feasible."

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]

The first part of the privacy analysis is whether a sufficient privacy interest exists regarding any individuals identified in the withheld records. The D.C. Circuit has stated:

[1] D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). As the records in this case involve the investigation of criminal matters, the exemption here is asserted under, and would be judged by the standard for, Exemption (3)(C).

> [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).

In the case of the factual circumstances surrounding the Appeal, it appears that the individuals who are identified in the records may be victims, suspects, or witnesses. As we have stated in past decisions, there is a sufficient individual privacy interest for a person who is being investigated for wrongdoing. The Supreme Court held that "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 780 (1989). "[I]nformation in an investigatory file tending to indicate that a named individual has been investigated for suspected criminal activity is, at least as a threshold matter, an appropriate subject for exemption under 7(C) [as noted above, D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]." *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 863 (D.C. Cir. 1981). The D.C. Circuit has also stated that nondisclosure is justified for documents that reveal allegations of wrongdoing by suspects who never were prosecuted. *See Bast v. U. S. Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981). As set forth above, the D.C. Circuit in the *Stern* case stated that individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity and that protection of this privacy interest is a primary purpose of the exemption in question.

An individual who is a victim of an alleged criminal infraction has a privacy interest in personal information which is in a government record. Disclosure may lead to unwanted contact and harassment. *Kishore v. United States DOJ*, 575 F. Supp. 2d 243, 256 (D.D.C. 2008); *Blackwell v. FBI*, 680 F. Supp. 2d 79, 93 (D.D.C. 2010). Likewise, it is clear that an individual who is a witness has a sufficient privacy interest in his or her name and other identifying information which is in a government record. *See Stern v. FBI, supra*; *Lahr v. NTSB*, 569 F.3d 964 (9th Cir. 2009)(privacy interest found for witnesses regarding airplane accident); *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1023 (9th Cir. 2008)(privacy interest found for government employees who were cooperating witnesses regarding wildfire); *Lloyd v. Marshall*, 526 F. Supp. 485 (M.D. Fla. 1981) ("privacy interest of the witnesses [to industrial accident] and employees is substantial . . ." *Id*. at 487); *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984)(privacy interest found for witnesses regarding industrial accident); *Codrington v. Anheuser-Busch, Inc.*, 1999 U.S. Dist. LEXIS 19505 (M.D. Fla. 1999) (privacy interest found for witnesses regarding discrimination charges). An individual does not lose his privacy interest because his or her identity as a witness may be discovered through other means. *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 922 (11th Cir. 1984); *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 501 (1994). ("An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.")

As stated above, Appellant contends that no individual privacy interest is implicated because the real property address specified by Appellant is listed, as indicated in attached records, as the business address of a specified limited liability company. However, according to District real property records, which are open to public inspection, such real property is listed as a single family residence, titled in the name of an individual. According to the records submitted by Appellant, the business has two employees. Thus, the best inference is not, as Appellant maintains, that this is a business property, but that this is a residence where one of the residents operates a home-based business.[2] Thus, the incidents which occurred may have no connection to the business being operated at the residence. Moreover, even if the matters investigated occurred in the course of transacting business, that does not necessarily vitiate the privacy interests of the individuals connected to any criminal matters.

There is clearly a personal privacy interest of the victims, suspects, or witnesses in the withheld records identified by MPD as responsive to the FOIA Request.

As stated above, the second part of a privacy analysis 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).

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

[2] Indeed, given the location of the real property and its classification a single family residence, it is questionable whether its zoning would permit a business-only use.

> 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.)

As set forth above, Appellant argues that there is a public interest in knowing whether MPD is "carrying out [its] duties in a consistent and fair manner." However, in the Appeal, there has been no allegation of wrongdoing by MPD, the agency in question. Accordingly, under the principles set forth above, there is not a sufficient public interest to overcome the privacy interest of individuals identified in the records. 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).[3]

Appellant asserts that even if a privacy interest is present, the names of individuals can be redacted to protect their privacy interests. However, the name of the owner of the real property is listed in the public records and the records provided to us by Appellant list the name of the registered agent of the limited liability company at the real property address, which individual, in all likelihood, resides at such address. Thus, disclosure of the withheld records in redacted form

[3] "'[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*."

will not protect their privacy interests. *See*, e.g., Freedom of Information Act Appeal 2014-83 (redaction not effective where the complainant has been identified) and Freedom of Information Act Appeal 2013-51 (redaction not effective where appellant identified individuals in connection with the requested records).

Therefore, based on the foregoing, we find that the response of MPD to the FOIA Request was proper.[4]

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.

[4] Appellant implies that the withheld records are available under D.C. Official Code § 5-113.06. However, the withheld records do not appear to be among those that are included under this statutory provision. Moreover, to extent that such records would have been included, the right to inspect those records would be enforced under a statutory scheme separate from DC FOIA.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-89

July 14, 2014

Mr. Mark Eckenwiler

Dear Mr. Eckenwiler:

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 19, 2014 (the "Appeal"). You assert that that the Department of Consumer and Regulatory Affairs ("DCRA") improperly withheld records in response to your request for information under DC FOIA dated March 31, 2014 and amended on April 29, 2014 (the "FOIA Request") by failing to respond to the FOIA Request.

Appellant's FOIA Request sought records submitted to DCRA, and records created by DCRA, regarding a specified real property which was alleged to be vacant. Prior to initiating the search, DCRA provided to Appellant a cost estimate for the processing of the FOIA Request and a notification that it was declining his request for a fee waiver. As a result of his failure to obtain the fee waiver, Appellant narrowed the FOIA Request only to records submitted to DCRA regarding a specified real property. When DCRA failed to provide a timely final response to the FOIA Request, as so amended, even after Appellant emailed DCRA on May 28, 2014, regarding the status, Appellant initiated the Appeal.

In its response to the Appeal, dated July 9, 2014, DCRA stated that, after receiving the narrowed FOIA Request, on May 7, 2014, it requested that Appellant clarify the FOIA Request and that Appellant failed to do so. Upon the invitation of this office, DCRA provided its May 7 email and Appellant provided his May 28 email.

Under DCMR § 1-402.5, an agency is directed to contact a requester if the search will be unduly burdensome. Here, the DCRA May 7 email did not request a clarification which was needed in order to perform the search, but merely asked if the previous request was withdrawn. If there was any doubt about the desire of Appellant to receive the requested records, Appellant stated on May 28 that he was still waiting to receive such records. However, despite the posture of both parties that there is still a live controversy pending, in furnishing his supplement, Appellant indicated, with a supporting document, that DCRA "finally produced the requested documents" on July 7, 2014.

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 DCRA.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Tania Williams

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-90

July 23, 2014

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 June 12, 2014 (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 on May 30, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought "records of the contract in effect between the District and the vendor of the 'FOIA Xpress' system that is computer software designed to handle requests to D.C. government agencies under the D.C. FOIA." Appellant stated that the requested information should include:

1. Solicitation documents;

2. Sole-source justification (if no competitive procurement was used);

3. Business and technical proposals accepted that form the basis for the resulting contract;

4. The contract as originally executed;

5. Modifications to the original contract; and

6. Letters or emails directing the work of the contractor.

In response, by letter dated June 12, 2014, OCP stated that it "does not maintain this information" and that "the custodian of this information is the Council of the District of Columbia, Office of the General Counsel."

On Appeal, Appellant challenges the adequacy of the search for the requested records, indicating that as the Mayor, by press release, announced the "'procurement of new software'," contract documents should exist. While OCP stated in an email that it searched its Procurement Automated Support System database, Appellant further indicates that such search "may not be complete."

On June 20, 2014, subsequent to the transmittal of the Appeal, OCP sent a "revised response" to Appellant, indicating that they had "identified 55 pages in response" to the FOIA Request. Appellant advised this office, with a copy to OCP, that it was not satisfied with the completeness of the response of OCP, as revised.[1]

> For example, after months have elapsed and (on information and belief) the vendor has done extensive work, the agency locates not a single record of any modification that proved necessary, or any direction by the government? The D.C. government surely doesn't spent $191,000 without a single record after the execution of the contract.

In response, dated July 11, 2014, OCP reaffirmed its position in its revised response. OCP explained that it initially searched the Procurement Automated Support System database ("PASS") and the contract identified by the search listed an individual at the Council as the contact. However, in response to allegations of Appellant that there was a mistake, OCP contacted a government employee who was familiar with subject contract, which employee identified the appropriate OCP contracting officer. OCP states that the requested records were provided thereafter to Appellant. OCP also stated: "There are no modifications or additional documents in the contract file, and OCP does not maintain any correspondence between the contractor and the contract administrator."

OCP submitted a supplement in response to an invitation by this office to clarify the form in which the requested records are or would be maintained and the manner in which the search was conducted for the contract documents (items 1 through 5 as listed above) and for letters or emails (item 6 as listed above).

First, with respect to the manner in which the requested records are maintained, OCP stated:

> OCP maintains the records described in items 1-5 in electronic format (searchable databases and word processing forms) and some paper-based files in the possession of the contracting officer.
>
> OCP does not maintain the documents described in item 6.

Second, with respect to the form in which the requested records are maintained, OCP stated: "Electronic format (searchable databases (PASS and word processing forms in public files) and

[1] Appellant characterizes the records provided as follows: "The 55 pages include 8 pages that appear to be DC Government procurement papers (a purchase order, a task order, a vendor quotation/invoice, an entity overview page, mostly bearings dates of September 18, 2013), and 47 pages that are the vendor's "schedule price list" under GSA Contract GS-35F-4747G."

some paper-based files." Third, with respect to the manner in which the search was conducted, OCP stated:

> The search was initially conducted in the OCP's Ariba based Procurement Automated Support System (PASS) by key words 'FOIA Xpress' and 'AINS'. The search came back identifying a contact person in the Office of the General Counsel for the D.C. Council. After objections from the requestor, I called the person who I knew administered the FOIA Xpress contract and obtained the name of the OCP contracting officer for the contract. We then requested the documents from the contracting officer.

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,[2] 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 with respect to two groupings: (1) contract documents; and (2) letters or emails.

With respect to contract documents, OCP states that it maintains contract documents in electronic format (searchable databases (PASS) and word processing forms) and in paper-based files in the possession of the contracting officer. However, as to the manner in which the search was conducted, OCP indicates only that the contracting officer conducted the search. There is no indication as to how the contracting officer conducted the search. In its initial response to the Appeal, OCP stated that it has provided all responsive records in its contract files, but it does not

[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, Freedom of Information Act Appeal 2014-07, Freedom of Information Act Appeal 2014-30, and Freedom of Information Act Appeal 2014-50.

indicate which contract files were searched. As stated above, generalized and conclusory allegations cannot suffice to establish an adequate search. Moreover, an agency has the burden of proof to establish the adequacy of the search. Here, there has been no demonstration that the contracting officer searched all the locations where the records may be maintained. Therefore, with respect to the contract records, OCP shall conduct a supplemental search in the electronic formats in which it maintains contract documents, i.e., PASS and word processing files, and shall search all paper-based contract files maintained by the contract officer.

With respect to letters and emails, OCP stated that in its initial response to the Appeal that it "does not maintain any correspondence between the contractor and the contract administrator" and its supplement simply that it "does not maintain the documents described in item 6." As a matter of common sense, we know that OCP is not asserting that it does not maintain email or paper-based correspondence. Thus, we are left with the conclusory assertion that there are no responsive records. However, as was the case with the contract documents, OCP does not state the manner in which it made that determination, i.e., the manner in which it made the search. Therefore, with respect to letters and emails, OCP shall conduct a supplemental search by searching the electronic mailbox of the contracting officer and shall search the paper-based contract files maintained by the contracting officer.

It should be clearly noted that by directing a new search to be made, we are not indicating that additional responsive records do, in fact, exist. Until such search is conducted, we will not know whether or not there are additional records which are to be disclosed.

Conclusion

Therefore, the decision of OCP is reversed and remanded. As set forth above:

1. With respect to the contract records, OCP shall conduct a supplemental search in the electronic formats in which it maintains contract documents, i.e., PASS and word processing files, and shall search all paper-based contract files maintained by the contract officer.

2. With respect to the letters and emails OCP shall conduct a supplemental search by searching the electronic mailbox of the contracting officer and shall search the paper-based contract files maintained by the contracting officer.

The response shall be provided within fifteen (15) business days after the date of this order.

This order shall be without prejudice to Appellant to assert any challenge, by separate appeal, the response of OCP 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: Nancy Hapeman, Esq.
Jody M. Harrington, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-91

July 30, 2014

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 July 7, 2014 (the "Appeal"). You, on behalf of a client ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your requests for information under DC FOIA dated April 16, 2014 (the "FOIA Request) by failing to respond to the FOIA Request.

Appellant's FOIA Request sought records pertaining to the implementation of the Supervisory Support Program and a related database called the Personnel Performance Management System. When MPD failed to provide a response to the FOIA Request, Appellant initiated the Appeal.

In response to the Appeal, dated July 25, 2014, MPD stated that it is "processing both requests for documents and will release all responsive documents subject to appropriate redactions. The department anticipates releasing the documents in the next week." 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 TO THE MAYOR
Freedom of Information Act Appeal: 2014-92

July 30, 2014

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 July 7, 2014 (the "Appeal"). You, on behalf of a client ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your requests for information under DC FOIA dated April 16, 2014 (the "FOIA Request) by failing to respond to the FOIA Request.

Appellant's FOIA Request sought records pertaining to the implementation of the Supervisory Support Program and a related database called the Personnel Performance Management System. When MPD failed to provide a response to the FOIA Request, Appellant initiated the Appeal.

In response to the Appeal, dated July 25, 2014, MPD stated that it is "processing both requests for documents and will release all responsive documents subject to appropriate redactions. The department anticipates releasing the documents in the next week." 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 TO THE MAYOR
Freedom of Information Act Appeal: 2014-93

August 5, 2014

Anthony Conti, Esq.

Dear Mr. Conti:

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 July 8, 2014 (the "Appeal"). Your law firm, on behalf of a client ("Appellant"), asserts that the Board of Ethics and Government Accountability ("BEGA") improperly withheld records in response to your request for information under DC FOIA dated April 14, 2014 (the "FOIA Request).

Appellant's FOIA Request sought records related to guidance from the Office of the Attorney General regarding the jurisdiction of BEGA and to multiple specified investigations as well as the audio recording for the March 6, 2014 BEGA public meeting. In response, by letter dated May 15, 2014, BEGA provided certain records, but withheld other records based on exemptions under various statutory exemptions, including D.C. Official Code § 2-534(a)(3)(C) and (E), (4), and (6) and D.C. Official Code § 2-534(e). On Appeal, Appellant challenged the assertion of the exemptions and the failure to consider redaction of the records withheld.

Subsequent to the docketing of the Appeal, Appellant notified our office that it was withdrawing the Appeal. Based on the foregoing, the Appeal is hereby dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Traci Hughes, Esq.
Daniel McCartin, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-94

August 4, 2014

Mr. Terence Bethea

Dear Mr. Bethea:

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 July 2, 2014 (the "Appeal"). You ("Appellant") assert that the District of Columbia Housing Authority ("DCHA") improperly withheld records in response to your request for information under DC FOIA dated June 6, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought "Applicant's Placement Lists" from October 2008, through June, 2009. In response, by letter dated June 19, 2014, DCHA denied the FOIA Request on the basis that the disclosure of the responsive records would be "an invasion of personal privacy, pursuant to the Privacy Act of 1974." After receiving such denial, by letter dated June 27, 2014, Appellant wrote to the agency director and, although disagreeing with response, stated that he would revise the FOIA Request to be limited to those lists where his name appears. Appellant indicated that he wanted the lists to demonstrate that, contrary to the statement of an agency employee, he was on two of the lists, so that he could maintain his standing on such lists. The administrative record does not show that an agency FOIA officer received this letter.

On Appeal, Appellant challenges the denial, contending that the District of Columbia is not an agency to which the Privacy Act of 1974 or the federal FOIA apply.

In its response, dated March 14, 2014, DCHA reaffirmed and amplified its position. DCHA asserts that the disclosure of the lists are exempt from disclosure not only under the Privacy Act of 1974, but also under D.C. Official Code § 2-534(a)(2). As to the latter, DCHA states: "The documents requested by Mr. Bethea contained personal identifying information of numerous individuals." In addition, in response to the revision of the FOIA request as set forth above, DCHA submits, as responsive records, an Applicant Profile and a statement of the status of the housing assistance application of Appellant.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The response of DCHA to the FOIA Request premised its withholding of responsive records on the federal Privacy Act of 1974 and Appellant submitted the Appeal based on this position. Moreover, in its response to the Appeal, DCHA maintains that the Privacy Act of 1974 provides an exemption from disclosure. However, the Privacy Act of 1974, like the federal FOIA, is a federal statute which applies only to the federal government. *See*, e.g., *Hous. Auth. v. Gomillion*, 639 So. 2d 117 (Fla. Dist. Ct. App. 5th Dist. 1994). Nevertheless, while the Privacy Act of 1974 does not apply, in its response to the Appeal, DCHA asserts that the responsive records may be withheld pursuant to the exemption for privacy under D.C. Official Code § 2-534(a)(2).

D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."[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 a waiting list for housing, 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.

The information which is contained in the housing waiting lists does not appear on the administrative record. For the purposes of the Appeal, we will presume that the lists contain the name and address of the applicants. The Supreme Court stated that "whether disclosure of a list of names is a 'significant or a de minimis threat depends upon the characteristic(s) revealed by virtue of being on the particular list, and the consequences likely to ensue.' [citation omitted]." *United States Dep't of State v. Ray*, 502 U.S. 164, 177 (1991). In *Matter of Thomas v. City of N.Y. Dept. of Hous. Preserv. & Dev.*, 12 Misc. 3d 547 (N.Y. Sup. Ct. 2006), like here, a case involving a waiting list for public housing, the court found that there was an insufficient privacy interest justifying the withholding of the records. Although the agency argued that release of the names of the applicants "might" reveal their income, the court found that this was "speculative," as "financial resources are not part of the information on the waiting list" and "financial resources of an applicant is not relevant to being placed on these lists; eligibility, for which financial resources are relevant, is only determined at the time an apartment is offered." *Id*. at 553-554 (N.Y. Sup. Ct. 2006). In *Washington Post Co. v. United States Dep't of Agric.*, 943 F. Supp. 31 (D.D.C. 1996), the requester sought the names and addresses of, and amounts paid to, individuals and business entities that received payments under the cotton price support program. In finding an insufficient privacy interest, the court stated:

> The nature of the list sought by plaintiff in this case does not create the same sort of personal privacy concerns or invite the kind of unwarranted intrusions that would justify nondisclosure. The only individualized information that would be ascertainable from the release of the list is that a particular individual grows cotton, the address of the farm where the cotton is grown and where the subsidy is received, and how much of a subsidy that cotton farmer received in 1993. It might also be deduced from the amount of the subsidy how much cotton the producer grew in 1993. The Court is unable to discern, nor have defendants persuasively explained, how any of this relatively generic information about thousands of similarly situated businesspeople could lead to clearly unwarranted invasions of their personal privacy. Indeed, it is precisely because the list is so large and the information so generic that the individual privacy interests are so small. *See Kurzon v. Department of Health and Human Services*, [649 F.2d 65, 69 (1st Cir. 1981) ('The loss of privacy involved in disclosing the identities of all applicants is minimal; it is only the fact [that an applicant was rejected] that raises the possibility of an invasion of privacy.') (emphasis in original). [footnote omitted].

Id. at 34. We note that in the case of the Appeal, based on the records submitted by DCHA, the lists involve tens of thousands of names.

In *Riverkeeper v. FERC*, 650 F. Supp. 2d 1121, 1122 (D. Or. 2009), the court found that there was an insufficient privacy interest in mailing lists showing the names and addresses of landowners notified of four public hearings about a proposed 220-mile natural gas pipeline. However, the court noted that the presence of the landowners on the list was involuntary and revealed no private decisions.

By contrast, in *Minnis v. United States Dep't of Agriculture*, 737 F.2d 784 (9th Cir. 1984), the court found a sufficient privacy interest in the names and addresses of all persons who applied for permits to travel on the Rogue River in Oregon. In *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224 (D.C. Cir. 2008), a sufficient privacy interest was found in an agency database which could be used to identify family farms and the crops grown as "[i]nformation about the crops on these farms 'would necessarily reveal at least a portion of the owner's personal finances.' [citation omitted]." *Id*. at 1229.

However, it is not necessary to decide whether the waiting lists need be disclosed in unredacted form. As stated above, Appellant made a proffer, requesting lists where his name appears for the purpose of demonstrating that, contrary to the statement of an agency employee, he was on two of the lists, so that he could maintain his standing on such lists. With its response to the Appeal, DCHA provided an Applicant Profile and a statement indicating the standing of Appellant on two lists, which records are to be provided to Appellant. While we believe that this is a good faith effort to meet the needs of Appellant, we believe that it can provide an accommodation more tailored to the FOIA Request. Based on the proffer of Appellant, DCHA shall provide Appellant with the first page and the page on which Appellant appears of each waiting list, redacted for the identifying information of the other applicants and a notation on the latter page that the other pages of the waiting list have been redacted in their entirety. The foregoing will evidence the presence of Appellant on the waiting lists without compromising the identity of any other applicants.

Conclusion

Therefore, the decision of DCHA is reversed and remanded. DCHA shall provide Appellant with the first page and the page on which Appellant appears of each waiting list, redacted for the identifying information of the other applicants and a notation on the latter page that the other pages of the waiting list have been redacted in their entirety.

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: Qwendolyn Brown, Esq.
Mario Cuahutle, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-95

August 8, 2014

Gerald L. Gilliard, Esq.

Dear Mr. Gilliard:

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 July 12, 2014 (the "Appeal"). You ("Appellant") assert that the District of Columbia Public Schools ("DCPS") improperly withheld records in response to your requests for information under DC FOIA, dated June 5, 2014 (the "First FOIA Request," the "Second FOIA Request," and, collectively, the "FOIA Requests").

Background

Appellant's First FOIA Request sought answers to certain questions regarding the employment of the specified individual and provisions of District law.

It appears that on the same date, Appellant sent another FOIA Request, the Second FOIA Request, seeking:

1. The employment application that a specified individual submitted to DCPS.

2. The results of the criminal background check that DCPS conducted as a result of the employment application of the specified individual.

3. The results of any criminal background check that DCPS conducted regarding the specified individual.

In response, DCPS sent two letters, both dated June 9, 2014. As to the First FOIA Request, DCPS indicated that it could not respond to the FOIA Request because, under DC FOIA, it is not required to provide answers to questions, only documents in response to request for responsive records. As to the Second FOIA Request, DCPS stated that the records were exempt from disclosure under D.C. Official Code § 2-534(a)(2), (3)(C), and (6).

On Appeal, Appellant states, in pertinent part:

> Please ask the District of Columbia Public Schools to answer my questions.
>
> If the District of Columbia Public Schools still refuses to 'provide responses to questions,' as stated in the attached letter, then I would respectfully request that you require the District of Columbia Public School, at the very least, to provide documents responsive to my questions, be they copies of statutes or regulations or of other documents.

In its response, by letter dated July 29, 2014, DCPS reaffirmed its denial. DCPS first states that, by letter also dated July 29, 2014, it amended both its responses to the FOIA Requests and set forth additional statutory bases providing an exemption from disclosure. DCPS states its principal argument as follows:

> Neither FOIA nor an appeal of a FOIA matter is designed to answer questions. . . . 1 DCMR § 406.2(b), specifically exempts 'information of a personal nature with the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.' Clearly, an individual's employment information, including but not limited to 'criminal background checks' is information of such a personal nature that public disclosure would constitute an absolute unwarranted invasion of personal privacy.

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 states what appears to be a challenge only to the First FOIA Request, but we will consider both of the FOIA Requests nonetheless.

As stated above, the First FOIA Request sought answers to certain questions regarding the employment of the specified individual and provisions of District law.

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). Subsection 1-402.4 of the District of Columbia Municipal Regulations provides: "A request shall reasonably describe the desired record(s)."

DC FOIA does not provide a right to challenge the correctness or reasoning of an agency decision, to interrogate an agency, to require an agency to conduct research, or otherwise to require answers to questions posed as FOIA requests. See *Department of Justice Guide to the Freedom of Information Act* (2009) at 51, n. 127 (collecting cases, reported and unreported).

As DCPS indicated in its response to the First FOIA Request, the First FOIA Request was not a proper request under DC FOIA and it is not required to answer the questions posed by Appellant. The contention that DCPS should provide documents in response to the questions requires that the agency conduct research, not identify responsive records.

Nevertheless, although Appellant does not address the Second FOIA Request in the Appeal, it provides a request, roughly equivalent to records sought in the First FOIA Request, which is cognizable under DC FOIA. Although it cites several bases for exemption in its responses to Appellant, the contention expressly advanced in response to the Appeal is the exemption for privacy under D.C. Official Code § 2-534(a)(2).

D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption 3(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). In this case, the first part of the Second FOIA Request, the employment application, generally does not relate to a law enforcement function and the matter would be judged by the standard for Exemption (2). However, that is not the case with respect to the records relating to the criminal background checks requested in the second and third part of the Second FOIA Request. 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.

Thus, responsive records which relate to the criminal back ground checks requested in the second and third part of the Second FOIA Request would be considered investigatory records compiled for law-enforcement purposes and the those parts would be judged by the standard for Exemption (3)(C).

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

> [A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. See *Department of the Air Force v. Rose*, 425 U.S. 352, 48 L. Ed. 2d 11, 96 S. Ct. 1592 (1976); *Simpson v. Vance*, 208 U.S. App. D.C. 270, 648 F.2d 10, 14 (D.C. Cir. 1980); *Sims v. CIA*, 206 U.S. App. D.C. 157, 642 F.2d 562, 575 (D.C. Cir. 1980). That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures. See *Simpson*, 648 F.2d at 14. But it also reflects the employee's more general interest in the nondisclosure of diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee's personnel file.

Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984).

Moreover, it has been recognized that "while the privacy interests of public officials are 'somewhat reduced' when compared to those of private citizens, 'individuals do not waive all privacy interests . . . simply by taking an oath of public office.'[citation omitted.]" *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008).

In applying these principles, as stated above, the first part of the analysis is to determine whether there is a sufficient privacy interest present.

With respect to the employment application materials, we stated in Freedom of Information Act Appeal 2012-76: "In general, it has been held that an employee has a privacy interest in the contents of his employment file." In *Core v. United States Postal Service*, 730 F.2d 946 (4th Cir. 1984), the court found that applications for employment implicated a sufficient privacy interest. *See also* Freedom of Information Act Appeal 2011-36.[1]

With respect to the criminal background checks, 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.

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.

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

[1] "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)."

> disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

While there may be a public interest in revealing the identity of a high-level government official involved in wrongdoing, there is generally not such an interest when lower-level employees are involved, particularly when they are the subjects of an investigation. *Stern v. FBI*, 737 F.2d 84 (D.C. Cir. 1984).

We will address first the first category of withheld records, employment application materials. Both case law and our administrative decisions have made it clear that the public interest in the applications of successful candidates for government employment outweigh the privacy interest of the employees. In *Core v. United States Postal Service*, 730 F.2d 946 (4th Cir. 1984), in finding that the public interest prevailed, the court stated:

> [D]isclosure of information submitted by the five successful applicants would cause but a slight infringement of their privacy. In contrast, the public has an interest in the competence of people the Service employs and in its adherence to regulations governing hiring. Disclosure will promote these interests.

Id. at 948.

See also Barvick v. Cisneros, 941 F.Supp. 1015 (D. Kan.1996), *Associated General Contractors, Northern Nevada Chapter v. U.S. Environmental Protection Agency*, 488 F.Supp. 861, (D. Nev. 1980)("It cannot be said under any standard of reasonableness that information regarding the education, former employment, academic achievements and qualifications of employees are so personal that disclosure would 'constitute a clearly unwarranted invasion of personal privacy.'" *Id*. at 863 -864). In ordering the release of an email chain regarding the hiring decision for an attorney, a California federal court stated:

> Plaintiff's interest-and the public's interest-in determining whether Ms. Goldstein's hiring was improper is sufficient to outweigh any minimal privacy interest Ms. Goldstein may have in keeping these opinions from the public. Accordingly, these documents must be disclosed.

Habeas Corpus Resource Center v. U.S. Dept. of Justice, 2008 WL 5000224, 4 -5 (N.D. Cal. 2008).

Our own appeals decisions have recognized and adopted this view. In Freedom of Information Act Appeal 2011-36, relying on *Core* and *Barvick*, we stated, in pertinent part, that "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 . . ." In Freedom of Information Act Appeal 2011-56, in recognizing these principles, the Department of Human Resources reconsidered its position and released the

resumes of the Excepted Service appointees of the Mayor. In MCU 409467, citing *Core* among other authority, it was found that the "names, professional qualifications, and work experience of the successful candidates is required to be disclosed," but not other private information such as home telephone numbers and addresses, dates of birth, and social security numbers.

However, each of these cases and our administrative decisions involved current employees. In the case of the Appeal, Appellant indicates that the specified individual is no longer a DCPS employee. We have not found any instructive authority with respect to the employment applications of former employees. We believe that there is a public interest in knowing the qualifications of current employees, whose compensation is being paid from public funds and who discharge public functions. However, we do not believe that there is the same public interest in knowing the qualifications of employees who longer perform public service and who are not being compensated by public funds. Thus, we find here that the public interest in disclosure does not outweigh the personal privacy interest of the specified individual.

We will address next the public interest in disclosure of the second and third categories of withheld records, .i.e., relating to the results of criminal background checks.

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 DCPS, the agency in question. At most, the Appeal evinces a disagreement with the decision to employ the specified individual based on allegations of the character of such individual. Moreover, as we indicated in Freedom of Information Act Appeal 2014-32, a mere interest in confirming that an agency has properly performed a background investigation without allegations, much less evidence, that the agency engaged in any improprieties in doing so will not be sufficient to overcome the personal privacy interest in the disclosure of the criminal background of the applicant. Accordingly, under the principles set forth above, there is not a sufficient public interest in disclosure to overcome the personal privacy interest of the results of the criminal background check of the specified individual.[2]

Accordingly, based on the foregoing, it is not necessary to consider the other claims of exemption which DCPS states in its responses to the FOIA Requests.

Conclusion

Therefore, the decision of DCPS is upheld. The Appeal is hereby dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

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[2] 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).

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Donna Whitman Russell, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-96

July 22, 2014

Mr. Will Sommer

Dear Mr. Sommer:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) (the "DC FOIA"), received July 16, 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 June 20, 2014 (the "FOIA Request").

Appellant's FOIA Request sought certain records relating to D.C. Chartered Health Plan, Inc. ("Chartered"), an entity which was identified as subject to a "receivership lawsuit filed by DISB's commissioner on behalf of Chartered Health. In response, dated July 14, 2014, DISB denied the FOIA Request, stating principally that the records of Chartered, a nongovernmental entity, are not subject to DC FOIA and that other Chartered records obtained by DISB "are protected by the statutory exemption for examinations." On Appeal, Appellant contends that any records which come into the possession of the agency, whether as a receiver or otherwise, are subject to DC FOIA. In response, dated July 21, 2014, DISB argues principally that, under judicial precedent which it cites, an insurance commissioner acting as a rehabilitator pursuant to the order of a court, is acting as a private, not a government, official and is not subject to freedom of information laws such as DC FOIA. In addition, it represents that it maintains no responsive records. Based on the latter representation, Appellant withdrew the Appeal.

Based on the foregoing, the Appeal is hereby dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Stephanie Schmelz, Esq.
Claudine Alula
Dena Reed, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-97

July 22, 2014

Mr. Douglas Ticker

Dear Mr. Ticker:

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 July 15, 2014 (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 June 12, 2014 (the "FOIA Request).

Appellant's FOIA Request sought records relating to a fire occurring at a specified real property on a specified date. When FEMS failed to provide a response to the FOIA Request, Appellant initiated the Appeal.

Subsequent to the docketing of the Appeal, Appellant notified our office that FEMS had responded to the FOIA Request and that he was withdrawing the Appeal. Based on the foregoing, the Appeal is moot and it is hereby dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Andrew Beaton

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-98

August 8, 2014

Barton J. Uze, Esq.

Dear Mr. Uze:

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 July 8, 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 dated May 27, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought the following records:

1. "Total Number of individual class 2 commercial properties generating two or more ballpark fee payments for each calendar years 2011-2013 and the amount of each individual ballpark fee payment made in each building."

2. "Number of individual hotels generating two or more ballpark fee payments each year for calendar years 2011-2013 and the amount of each payment made for each of these hotels."

3. "Number of class 2 commercial properties owned by caps are REITS (Real Estate Investment Trusts) that paid two or more ballpark fees per property in each calendar year from calendar year 2011-2013 and the amount of each ballpark fee paid."

4. "Number of hotels owned by REITS (Real Estate Investment Trusts) that paid two or more ballpark fees per hotel in each calendar year from 2011-2013 and the amount of ballpark fees paid for each of these hotels."

5. "Amount of ballpark fee payments paid by (i.e., attributable to) each individual hotel for each calendar year from 2011-2013 in the District of Columbia (no need to identify the name of each hotel)."

In response, by email dated June 30, 2014, OCFO stated that "the information that you are requesting can't be divulged due to additional confidential information potentially being released."

On Appeal, Appellant challenges the denial of the FOIA Request. Appellant states that the generic amount of ballpark fees paid over a 3-year period is "not of a personal nature" as would be exempt under D.C. Official Code § 2-534(a)(2), but "directly relates to tax information which must be made available to the general public" under D.C. Official Code § 2-536(a)(6). In addition, Appellant contends that the information must be made public under D.C. Official Code § 2-536(a)(6A) and (9).

In response, dated August 6, 2012, OCFO affirmed and amplified its position.

> In addition to denying Mr. Uze's requests under D.C. Official Code § 2-534(a)(6) and D.C. Official Code § 47-4406, which provides for secrecy of tax returns, [OCFO] is also denying his request on the ground that the information by Mr. Uze is not contained in [OCFO]'s existing records and that the District's FOIA does not require [OCFO] to compile the records in response to a FOIA request.

OCFO also states:

> As it pertains to Mr. Uze's requests, ballpark fee data is maintained in OTR's integrated tax system (ITS), and is accessed by a specific Federal Employer Identification Number (FEIN). Disclosure of Ballpark Fee information specifically, and income tax information in general, is generally prohibited by DC Code § 47-4406 [footnote omitted]. As such, specific information concerning particular taxpayers, such as amounts of payments, is protected from disclosure under the District's FOIA.

In order to clarify the administrative record, OCFO was invited to supplement the response regarding its integrated tax system ("ITS"), as follows:

> 1. Can ITS be searched to identify Class 2 real properties which pay the ballpark fee?
>
> 2. Can ITS be searched to identify hotel real properties which pay the ballpark fee?
>
> 3. Can ITS be searched to identify Class 2 real properties owned by real estate investment trusts which pay the ballpark fee?
>
> 4. Can ITS be searched to identify hotel real properties owned by real estate investment trusts which pay the ballpark fee?

In response, OCFO states as follows:

> We have posed your questions to our Office of Information Technology. It advises that ITS does not contain ball park fee information categorized by real property tax class or type of real property, such as a hotel. Accordingly, the ITS system cannot be searched

> for class 2 real properties or hotel real properties the owners of which pay the ballpark fee. The answer, therefore, to your four questions is that the ITS system cannot be searched in this manner.
>
> A primary reason is that the ballpark fee information is kept on the ITS system by EIN, but the Class 2 and hotel property information are retained separately by square and lot. As a result, ballpark fee information for Class 2 and hotel real properties is not available in the requested format.

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 we have stated in many decisions, under DC FOIA, an agency "has no duty either to answer questions unrelated to document requests or to create documents." *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985). The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978).

DC FOIA only requires production of records in the possession of an agency. As indicated, an agency is not required to create or maintain records.

> It is well established that an agency is not "required to reorganize (its) files in response to (a plaintiff's) request in the form in which it was made," [footnote omitted] and that if an agency has not previously segregated the requested class of records production may be required only "where the agency (can) identify that material with reasonable effort." [footnote omitted].

Goland v. CIA, 607 F.2d 339, 353 (D.C. Cir. 1978).

Here, OCFO indicates that it does not have an existing record in the format requested as all ballpark fee information is contained in its computer database, ITS. Nonetheless, as we

indicated in Freedom of Information Act Appeal 2011-58 and in Freedom of Information Act Appeal 2012-68 (in which OCFO was a party), in accordance with provisions of the federal FOIA, which we use as a guideline, an agency will be required to extract records from an electronic database in a requested form or format if it is not difficult to do so. The question is whether, in consideration of this principle, OCFO should be required to furnish the information sought by the FOIA Request.

In our view, the answer depends upon whether ITS can be searched in a manner which would allow OCFO to extract the requested information without difficulty. As indicated in its supplement, according to its Office of Information Technology, the ballpark fee information in ITS cannot be searched by real property class or real property type. Thus, the requested information cannot be provided without significant effort to reprogram ballpark fee information in ITS or to create a new document after research, both of which are not required under DC FOIA.[1]

Conclusion

Therefore, the decision of OCFO 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: Charles Barbera, Esq.
Alan Levine, Esq.
Angela Washington
Laverne Lee

[1] D.C. Official Code § 2-536(a)(6A) and (9) are not applicable as the information in the form which Appellant requests does not exist and has not been disseminated.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-99

August 8, 2014

Catherine D. Bertram, Esq.

Dear Ms. Bertram:

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 July 11, 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 July 7, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought "the audio recording and event chronology for a 911 call" regarding an accident where a pedestrian, the client, was struck by an automobile. In response, by email dated July 17, 2014, MPD stated: "Because of privacy concerns, we cannot release the 911 recording to you unless your client made the 911 call or the caller authorized your client to receive the 911 recording." MPD requested proof of identity or authorization from the caller. MPD further advised that Appellant may be able to obtain an Event Chronology without identification or authorization, but with redaction of identifying information. Appellant was asked to advise the MPD, but Appellant proceeded to submit the Appeal.

On Appeal, Appellant challenges the withholding of the 911 audio recording, contending that a 911 call is a public record and a 911 caller has no expectation of privacy.

In response, dated August 7, 2014, MPD revised its position. MPD stated that, upon inquiry to the Office of Unified Communications ("OUC"), it was advised that "the 911 call was for medical assistance and was handled by the District of Columbia Fire and Emergency Medical Service (DCFEMS)." At the invitation of this office, MPD submitted a supplement dated August 7, 2014. MPD clarifies that the 911 call in question is not an MPD record. MPD states that OUC manages the 911 call system for both MPD and the District of Columbia Fire and Emergency Medical Services Department ("FEMS"). 911 calls which are dispatched to MPD are maintained by OUC on behalf of MPD, but MPD does not maintain the records directly.

Upon receipt of the Appeal, when MPD contacted OUC, it was advised that the 911 call was dispatched to FEMS.

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).

Our past decisions have held that 911 calls are not public records and that a 911 caller has a personal privacy interest in his or her identity and other personal identifying details, which privacy interest is not outweighed by the need for disclosure for the purposes of litigation.[1] The MPD disclosure policy for FOIA requests conforms to the foregoing. It appears here that, based on its policy, MPD did not initiate a search until it could clarify with Appellant the extent to which disclosure, if any, could be made. However, when the Appeal was filed, MPD obtained further information about the 911 call in question. As MPD indicates, 911 calls which are dispatched to MPD and FEMS are maintained by OUC on behalf of MPD and FEMS, but neither MPD nor FEMS maintains the records directly. Because the 911 call was dispatched to FEMS, it became an FEMS, not an MPD, record. DC FOIA only requires production of records in the possession of an agency. Thus, irrespective of the privacy issue, MPD was not required to provide any records to Appellant because it did not have any responsive records.

Conclusion

Therefore, the decision of MPD is upheld. The Appeal is dismissed.

[1] As MPD does not have the capability to redact the audio of a 911 call to protect the identity of a caller, we have upheld the withholding of the audio of such calls in their entirety.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-100

August 18, 2014

Ann-Marie and Ray Kuyler

Dear Ms. and Mr. Kuyler:

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 July 23, 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 June 12, 2014 (the "FOIA Request").

On February 5, 2014, Appellant submitted a FOIA request seeking records held by Stoddert Elementary School regarding themselves or their child, manuals and instructions used by DCPS regarding reporting under D.C. Official Code § 4-1321, and any report regarding their student grievance request. On March 28, 2014, Appellant supplemented the request and sought an investigative report. When DCPS failed to provide a timely final response to the FOIA requests, Appellant initiated Freedom of Information Act Appeal 2014-59, but, during the course of the appeal, DCPS stated that it has been providing responsive records to Appellant on a rolling basis, that it has completed the production of such records, and that it had not withheld any responsive records. Freedom of Information Act Appeal 2014-59 was dismissed as moot, but without prejudice to Appellant to assert any challenge, by separate appeal, to the response of DCPS. On June 12, 2014, Appellant emailed DCPS and alleged that it had not received any of the records which DCPS had indicated that it had provided. In addition, Appellant stated that they were submitting a new request, the FOIA Request first identified above, identical to its prior requests of February 5 and March 28, 2014.

On Appeal, Appellant challenges the response of DCPS to the FOIA Request, as well as the prior FOIA requests, as nonexistent, stating that contrary to its representations, "DCPS has produced no documents" and "no explanation or communications to us regarding our FOIA Request whatsoever."

In response, dated August 15, 2014, DCPS stated that it had provided the requested records previously in response to the requests made by Appellant in February and March and that, in response to the identical request, the FOIA Request, it provided the records again by email dated August 15, 2014.

In Freedom of Information Act Appeal 2014-59, DCPS submitted a letter dated May 27, 2014, indicating that it had provided to Appellant the records which it possessed that were responsive to the requests made by Appellant in February and March. We presumed that such records were provided as indicated therein, although those records were not made part of the administrative record. However, as part of the administrative record in the Appeal, DCPS has submitted the responsive records, together with a substantially similar letter to that of May 27, 2014, which letter indicates that such records have been sent to Appellant. Our office was copied on the email transmitting the letter and those records. If there was any doubt that the responsive records had not been provided to Appellant, such transmittal resolves the uncertainty.

Accordingly, as Appellant has received the relief requested, that is, provision of all responsive records "with no exceptions," the Appeal is 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 TO THE MAYOR
Freedom of Information Act Appeal: 2014-101

August 21, 2014

Mr. Mark Eckenwiler

Dear Mr. Eckenwiler:

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 19, 2014 (the "Appeal"). You assert that that the Department of Consumer and Regulatory Affairs ("DCRA") improperly withheld records in response to your request for information under DC FOIA dated March 31, 2014 and amended on April 29, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought records submitted to DCRA, and records created by DCRA, regarding a specified real property which was alleged to be vacant. When DCRA failed to provide a timely final response to the FOIA Request, as so amended, even after Appellant emailed DCRA on May 28, 2014, regarding the status, Appellant initiated Freedom of Information Act Appeal 2014-89, but, during the course of the appeal, DCRDA responded to Appellant. Freedom of Information Act Appeal 2014-54 was dismissed as moot, but without prejudice to Appellant to assert any challenge, by separate appeal, to the response of DCRA.

On Appeal, Appellant challenges the response of DCRA, stating, in pertinent part:

> DCRA produced a single redacted record, its tax year 2014 vacancy exemption for the Property. . . . However, the original request sought records 'for the time period 1/1/11 through the date of this request' (March 31, 2014). DCRA VBEU has now admitted that there also exists a similar vacancy exemption for the Property for tax year 2012. Although that record is plainly responsive to the original request, DCRA has failed to produce it or any other responsive records (other than the single 2014 document described above).

In its response to the Appeal, dated August 19, 2014, DCRA states that "[a]s of August 14, 2014, Mr. Eckenwiler has received the document he requested." It indicates that the search was conducted by its Vacant Property Enforcement Unit and that the responsive records were sent to Appellant in July, 2014. DCRA states further:

> However, in August 2014, the FOIA Office sent a 2nd request to the Vacant Property Unit for the document Mr. Eckenwiler requested. It was at that time that the vacant property unit informed the FOIA Office that there had been an oversight on their behalf and forwarded the document in dispute to the FOIA Office.
>
> On August 14, 2014, the document in dispute was sent to Mr. Eckenwiler.

In response to an invitation to supplement the administrative record as to the form in which the requested records are maintained and the manner in which the search was conducted, DCRA states, in pertinent part:

> The Vacant Property Enforcement Unit records are maintained in DCRA's ACELLA Database, which is DCRA's Comprehensive Property Management System. Records are also maintained in paper based files within the Vacant Property Enforcement Unit. . . .
>
> The Vacant Property Enforcement Unit did an electronic search and a paper file search for the requested documents. At that time the requested document was not found. A second search for the document was conducted by way of a consultation with the Vacant Property Enforcement unit program analyst. At that time the requested document was not found. A third search for the document was conducted by way of a consultation with the Vacant Property Enforcement Unit manager. At that time the document was found and sent to Mr. Eckenwiler.

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 in the Appeal is the adequacy of the search by DCRA.

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.

An agency has the burden to establish the adequacy of its search. *See*, e.g., *Patterson v. IRS*, 56 F.3d 832, 840 (7th Cir. 1995); Freedom of Information Act Appeal 2012-48. However, an administrative appeal under DC FOIA is a summary process and we have not insisted on the same rigor in establishing the adequacy of a search as would be expected in a judicial proceeding.

Here, DCRA identified the location where the requested records would be found, its Vacant Property Enforcement Unit, and the form in which such records would be maintained, that is, an electronic database (called Acella) and paper-based files, and searched the database and paper-based files for the requested records. Ordinarily, we would find that this search is adequate and dismiss the Appeal without the order of any additional action by the agency. As we indicated above, a search is adequate if it is reasonably calculated to produce the relevant documents, whether or not any additional documents might conceivably exist. However, in the case of the Appeal, we cannot ignore the circumstances presented as to the execution of the search. Although the DCRA search only uncovered one responsive record, a 2014 vacancy exemption record for the subject property, Appellant was able to identify one missing record, a 2014 vacancy exemption record for the subject property, which missing record DCRA later provided. This suggests that there may be a vacancy exemption records for either or both 2011, the beginning period under the FOIA Request, and 2013. In addition, we note that DCRA "consulted" with the Vacant Property Enforcement Unit, but did not conduct a supplemental

search. Finally, DCRA has treated the Appeal as a petition to obtain a single record ("the document in dispute"), not for, as Appellant states, "any other responsive records." Therefore, notwithstanding our finding that DCRA designed a search reasonably calculated to produce the requested records, we are directing DCRA to conduct, through its Vacant Property Enforcement Unit, a supplemental search of its Acella electronic database and paper-based files for the requested records. Appellant should note that, despite ordering the supplemental search, we are not expressing any opinion as to whether or not there are additional responsive records which have not been provided.

Conclusion

Therefore, the decision of DCRA is remanded for disposition as set forth above. As set forth above, DCRA shall conduct, through its Vacant Property Enforcement Unit, a supplemental search of its Acella electronic database and paper-based files for the requested 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: Tania Williams

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-102

August 27, 2014

Mr. Bobby Dunn

Dear Mr. Dunn:

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 July 30, 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 May 11, 2014 ("FOIA Request").

Background

Appellant's FOIA Request sought from July 1, 2013, to July 24, 2014, police reports for two individuals residing at a specified address. Appellant requested that a search be made each by name and by address. In response, MPD denied the FOIA Request based on the exemptions from disclosure for personal privacy under D.C. Official Code § 2-534(a)(2) and (3)(C). MPD stated, in pertinent part:

> Third-party requests for law enforcement records can reasonably be expected to invade that citizen's privacy, and therefore may not be disclosed in the absence of a cognizable public interest. No public interest recognized under FOIA would be served by the release of the requested police reports. On balance, the privacy interests of the individuals named in police reports, either as victims of crimes or suspects in the commission of crimes, would prevail. Therefore, the requested police reports are exempt from disclosure under D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C) as an unwarranted invasion of personal privacy.

On Appeal, Appellant contends that the requested records are "public records. I can go to my local police station and request a public PD-251, and have done so many times. It is, however, a burden on the officer behind the desk to look up 12 months of public reports. I wouldn't ask that, and I doubt they would have the time to provide."

Appellant indicates that he has received similar information in a prior FOIA request.

In its response, dated August 18, 2014, MPD reaffirmed its position and adds:

> The core purpose of the Freedom of Information Act is to permit citizens to obtain information that show how the government is performing its functions. The release of the requested documents will not reveal the government is carrying out its duties and responsibilities. Accordingly, the privacy interests of the identified persons, from being identified as having been mentioning law-enforcement records, outweighs the absence of a public interest in the release of the documents.

MPD responded to an invitation to supplement the administrative record to address its policy and practice as set forth on its website regarding the furnishing of Form PD-251 to the public. MPD indicates that a form PD-251 is involved in this matter. As to the authority for furnishing the forms as set forth on its website, MPD states:

> The PD 251 is made available to the public pursuant to D.C. Official Code § 5-113.01 and 5-113.06. All requests for the PD 251 are routed to the FOIA Office pursuant to internal policy.

As to whether requests for the form are declined and the policy for doing so, MPD states:

> All requests for PD 251 are not fulfilled. Third-party requests and requests relating to an address are declined in the absence of an authorization. If a suspect requests the form, the name of the complaint is withheld.

As to the policy and standard for redactions, MPD states: "PD 251s that are not related to sexual assault cases are redacted. The name of a complainant is redacted if a requester is a suspect in the incident."

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]

The first part of the privacy analysis is whether a sufficient privacy interest exists regarding any individuals identified in the withheld records. 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).

In the case of the factual circumstances surrounding the Appeal, it appears that the individuals who are identified in the records may be victims, suspects, or witnesses. As we have stated in past decisions, there is a sufficient individual privacy interest for a person who is being investigated for wrongdoing. The Supreme Court held that "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 780 (1989). "[I]nformation in an investigatory file tending to indicate that a named individual has been investigated for suspected criminal activity is, at least as a threshold matter, an appropriate subject for exemption under 7(C) [as noted above, D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]." *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 863 (D.C. Cir. 1981). The D.C. Circuit has also stated that nondisclosure is justified for documents that reveal allegations of wrongdoing by suspects who never were prosecuted. *See Bast v. U. S. Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981). As set forth above, the D.C. Circuit in the *Stern* case stated that individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity and that protection of this privacy interest is a primary purpose of the exemption in question.

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[1] D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). As the request in this case implicates criminal matters, the exemption here is asserted under, and would be judged by the standard for, Exemption (3)(C).

An individual who is a victim of an alleged criminal infraction has a privacy interest in personal information which is in a government record. Disclosure may lead to unwanted contact and harassment. *Kishore v. United States DOJ*, 575 F. Supp. 2d 243, 256 (D.D.C. 2008); *Blackwell v. FBI*, 680 F. Supp. 2d 79, 93 (D.D.C. 2010). Likewise, it is clear that an individual who is a witness has a sufficient privacy interest in his or her name and other identifying information which is in a government record. *See Stern v. FBI, supra*; *Lahr v. NTSB*, 569 F.3d 964 (9th Cir. 2009)(privacy interest found for witnesses regarding airplane accident); *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1023 (9th Cir. 2008)(privacy interest found for government employees who were cooperating witnesses regarding wildfire); *Lloyd v. Marshall*, 526 F. Supp. 485 (M.D. Fla. 1981) ("privacy interest of the witnesses [to industrial accident] and employees is substantial . . ." *Id*. at 487); *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984)(privacy interest found for witnesses regarding industrial accident); *Codrington v. Anheuser-Busch, Inc.*, 1999 U.S. Dist. LEXIS 19505 (M.D. Fla. 1999) (privacy interest found for witnesses regarding discrimination charges). An individual does not lose his privacy interest because his or her identity as a witness may be discovered through other means. *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 922 (11th Cir. 1984); *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 501 (1994). ("An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.")

As stated above, Appellant contends that the requested records are "public records" and that forms PD-251[2] have been furnished to him in the past upon request. We note that MPD has indicated previously that a form PD-251 "is made publically available." Freedom of Information Act Appeal 2012-10. Indeed, the MPD website provides a procedure for the public to request and obtain a form PD-251. In order to clarify its practice and procedure, we invited MPD to supplement the administrative record to address the same. MPD states that form PD-251 is made available under the procedure set forth on its website pursuant to D.C. Official Code §§ 5-113.01 and 5-113.06. As we have indicated in past decisions, most recently, Freedom of Information Act Appeal 2014-88, to the extent that such records are to be provided, the right to inspect those records would be enforced under a statutory scheme separate from DC FOIA. Nevertheless, even under D.C. Official Code § 5-113.01 and 5-113.06, MPD does not accord an absolute right to requesters to obtain a form PD-251. It states that it redacts the form for some requests and that it does not provide the form, without authorization, for third party requests and requests relating to an address. These bases for withholding involve the same privacy considerations as set forth above. We believe that the provision of such records implicates a sufficient privacy interest of the individuals identified in the FOIA Request and redaction of the names of the individuals or the address identified would not protect such interest as these names and the address are known to Appellant.

Appellant maintains that he has requested and received similar records in a prior request. However, the provision of records in another situation does not compel a similar result in this situation. Unless otherwise prohibited by law, the release of records under DC FOIA as well as

[2] A form PD-251 is an Incident-Based Event Report.

the federal FOIA is discretionary. While MPD may choose to provide such forms, it is not compelled to do so.

There is a personal privacy interest of the individuals identified in the requested records.

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).

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.)

Appellant states that the documents are needed in connection with custody proceedings. However, disclosure is not evaluated based on the identity of the requester or the use for which the information is intended. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004); *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 771 (1989). As the administrative record does allege misconduct or otherwise indicate that the conduct of MPD is in question, it does not appear that the disclosure of the records will contribute anything to public understanding of the operations or activities of the government or the performance of MPD. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Thus, as this is not a case involving the efficiency or propriety of agency action, there is no public interest involved.

> In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure. See *Ray*, 112 S. Ct. at 548-50; *Dunkelberger*, 906 F.2d at 781. In this case, however, where we find that the request implicates no public interest at all, "we need not linger over the balance; something … outweighs nothing every time." *National Ass'n of Retired Fed'l Employees v. Horner*, 279 U.S. App. D.C. 27, 879 F.2d 873, 879 (D.C. Cir. 1989); see also *Davis*, 968 F.2d at 1282; *Fitzgibbon v. CIA*, 286 U.S. App. D.C. 13, 911 F.2d 755, 768 (D.C. Cir. 1990).

Beck v. Department of Justice, 997 F.2d 1489, 1494 (D.C. Cir. 1993).

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: 2014-103

August 29, 2014

Ms. Aliyyah Ferguson

Dear Ms. Ferguson:

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 July 25, 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 June 18, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought a specified investigative file associated with her. In response, by letter dated July 3, 2014, MPD provided records to Appellant, but redacted certain portions of the records based on the exemption for privacy under D.C Official Code § 2-534(a)(2), stating:

> The synopsis of the statement that you gave during the investigation is being released to you in its entirety. Two other attachments are being released to you. The names and other identifying information of witnesses mentioned in the investigative report and attachments have been redacted. Release of these documents would constitute a clearly unwarranted invasion of these individuals' personal privacy. Such information is exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2).

On Appeal, Appellant challenges response of MPD, principally with respect to three "attachments" which MPD provided to Appellant in response to the FOIA Request. First, while MPD indicated in its response that only redactions have been made, Appellant states that one of the attachments was withheld in its entirety and that the decision of a named individual was withheld, without justification. Second, Appellant contends that the government employees conducting the investigation are not witnesses and the exemption for privacy does not apply to such employees as they do not have a privacy interest. Third, citing a Superior Court decision, Appellant contends that MPD failed to redact properly the records provided. Fourth, Appellant indicates that "[t]here are several pages/documents that are unaccounted for" and MPD has not provided any explanation.

In response, dated August 21, 2014, MPD reaffirmed its position. Reiterating its statement in the response to the FOIA Request as to the records furnished to Appellant, MPD maintains not only that the disclosure of the "names and other identifying information" of "employees and non-

employees" in the report would constitute a clearly unwarranted invasion of privacy under D.C. Official Code § 2-534(a)(2), as it did in the response to the FOIA Request, but that it would also constitute an unwarranted invasion of privacy under D.C. Official Code § 2-534(a)(3)(C).

MPD explains that its Internal Affairs Division investigated Appellant with respect to her position in a civilian MPD office. The office consists of five employees and a supervisor. The investigator obtained statements from the office staff and summarized them in the investigative report.

> These statements as well as the investigative report were withheld in their entirety as the non-exempt information is inexorably intertwined with the information that would identify the [ ] staff members. The statements contained descriptions of the various duties and responsibilities of the staff. Due to the small size of the office, one can determine who the speaker is through a process of elimination.

MPD maintains that the staff members who "provided frank information to an investigator" and the investigator and "others in the chain of command" have a privacy interest, which interest is not outweighed by the public interest in disclosure as the disclosure of "names of the persons interviewed or identified in the investigation would not shed light on how the government is working." In addition, MPD states that the "matter was presented to the Office of the United States Attorney for the District of Columbia for possible criminal prosecution."

As to the allegation of Appellant that records were missing from the response to the FOIA Request, MPD states that Appellant has not indicated the records which are missing. "Upon receipt of information clearly identifying what she is referencing, an additional search was conducted."[1]

MPD responded to an invitation to supplement the administrative record to address the issue of redaction of the investigative report and manner in which the search was conducted. We asked if the names of the staff members and the descriptions of their duties and responsibilities were redacted, (1) can the identity of the speaker be determined from the remaining text; and (2) are there findings/conclusions/determinations/factual statements which can be provided without revealing the identity of the speakers? As to the first, MPD responded in the affirmative, stating, in pertinent part: "The remaining text provides sufficient information that could lead one with knowledge of the operations of the [civilian] office and the speaking styles of the staff to determine by process of elimination who is providing information." As to the second, MPD provided a copy of the investigative report, redacted for identifying information but with findings unredacted. As to the manner in which the search was conducted, MPD states, in pertinent part:

[1] In the Appeal, Appellant also states that MPD counsel told her that she was entitled to receive an unredacted copy of the investigative report. MPD explains that the reference to such investigative report applied to another matter. MPD further explains that, under an applicable collective-bargaining agreement, an employee is entitled to the investigative report where there is a finding of misconduct; in the case of the Appeal, the investigative report "did not conclude with a recommendation for discipline."

> The investigative file is maintained by the department's Internal Affairs Division (IAD). An electronic version and hard copy of the file was maintained by IAD. Since this investigation did not include any recommendation for the imposition of discipline, no unit other than IAD would have access to the file or copies thereof. . . .
>
> IAD searched its electronic and paper-based file for responsive documents.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

First, Appellant contends that an investigative report was withheld in its entirety (rather than redacted) and that the decision of a named individual was withheld in its entirety, both without justification. As to the latter, we will address it later in this decision. As to the former, it appears that there may have been a glitch in the transmittal of the records from MPD to Appellant. While MPD intended to provide a redacted investigative report to Appellant, it appears that a redacted report was not provided (there does appear to be a record in one of the attachments which was redacted in whole). Accordingly, MPD should provide this record to Appellant to reflect its intention. Thus, the issue of the withholding of the entire investigative report is moot, although the issue of redaction with respect to privacy remains.

As a second argument, Appellant contests the applicability of the exemption for personal privacy with respect to the identity of investigators who are government employees. The names of all government employees, including witnesses and investigators, were redacted, as well as any statements which could be used to identify them. As stated above, MPD initially asserted the privacy exemption under D.C. Official Code § 2-534(a)(2), but, on Appeal, has asserted the exemption under D.C. Official Code § 2-534(a)(3)(C). As a related third argument, Appellant contends that MPD over-redacted the records.

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). In this case, because the responsive records related to the possible imposition of disciplinary sanctions as well as possible criminal prosecution, the matter would be judged by the standard for Exemption (3)(C).

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

> [A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. See *Department of the Air Force v. Rose*, 425 U.S. 352, 48 L. Ed. 2d 11, 96 S. Ct. 1592 (1976); *Simpson v. Vance*, 208 U.S. App. D.C. 270, 648 F.2d 10, 14 (D.C. Cir. 1980); *Sims v. CIA*, 206 U.S. App. D.C. 157, 642 F.2d 562, 575 (D.C. Cir. 1980). That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures. See *Simpson*, 648 F.2d at 14. But it also reflects the employee's more general interest in the nondisclosure of diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee's personnel file.

Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984).

Moreover, it has been recognized that "while the privacy interests of public officials are 'somewhat reduced' when compared to those of private citizens, 'individuals do not waive all privacy interests . . . simply by taking an oath of public office.'[citation omitted.]" *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008).

Here, Appellant has apparently recognized the privacy interest of the individuals as witnesses, whether or not they are government employees. However, insofar as Appellant contends that no redaction other than the names of such witnesses is necessary, MPD has sufficiently justified the need for further redaction. Based on the size of the civilian office and the familiarity of Appellant, a member of such office, with the descriptions of the various duties and responsibilities of the staff and the nature of the comments in the statements contained in the records, it is reasonable to redact those statements is justifiable to safeguard the identity of those staff members.

Furthermore, while the investigators are not witnesses, this does not negate their privacy interest. In *Forest Serv. Emples. v. United States Forest Serv.*, cited above, the employees whose identity was redacted included investigators examining the agency response to a wildfire. In addition to embarrassment and stigma, the court found that disclosure would expose the investigators to unwanted contact. In *Wood v. FBI*, 432 F.3d 78, 88 (2d Cir. 2005), the court similarly found:

> This Court and others have recognized that government investigative personnel may be subject to harassment or embarrassment if their identities are disclosed. *See Halpern v. FBI*, 181 F.3d 279, 297 (2d Cir. 1999) (holding that FBI agents and other government employees have an interest against the disclosure of their identities to the extent that disclosure might subject them to embarrassment or harassment in their official duties or personal lives); *Massey v. FBI*, 3 F.3d 620, 624 (2d Cir. 1993) (same); *Nix v. United States*, 572 F.2d 998, 1006 (4th Cir. 1978) (holding that the public identification of FBI agents 'could conceivably subject them to harassment and annoyance in the conduct of their official duties and in their private lives'); *see also New England Apple Council v. Donovan*, 725 F.2d 139, 142 (1st Cir. 1984) (collecting cases). This interest against possible harassment and embarrassment of investigative personnel raises a measurable privacy concern that must be weighed against the public's interest in disclosure.

The exposure to unwanted contact is similarly present in the case of internal affairs investigations.[2]

Accordingly, we find that there is a personal privacy interest in the identity of the employees whose names were redacted as well as information in statements which could identify them.[3]

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[2] We note that Appellant states the name of the individual alleged to have prepared the investigative report. In Freedom of Information Act Appeal 2011-11, where the appellant stated all persons involved in the matter were known to him, we rejected this argument, stating that "disclosure is not evaluated based on the identity of the requester or the use for which the information is intended. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004)."

[3] Appellant indicates that a "decision" by an individual whose title was abbreviated as "A/C" was withheld. In Freedom of Information Act Appeal 2011-36, in the context of an analysis of the public interest in disclosure, we stated: "In *Wood v. FBI*, 432 F.3d 78 (2d Cir. 2005), in a law enforcement context, the names of investigators were not required to be revealed. However, the identities of the decision makers who were presented with the results of the investigations were disclosed pursuant to lower court action (although such disclosure had mooted the issue by the time that it reached the appeals court). See *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021 (9th Cir. 2008)(regarding privacy interests of investigators)." In our decisions, the disclosure of the identity of a decision-maker has never been placed squarely in issue. As the excerpt from Freedom of Information Act Appeal 2011-36 suggests, there may be an insufficient privacy interest in the identity of a government employee who decides the substantive rights of an individual, at least in the context of D.C. Official Code § 2-534(a)(2). *See also* Freedom of Information Act Appeal 2013-25. In the case of the Appeal, the search has not produced a responsive record which can be described as a decision, so the nondisclosure of such identity is not in issue. (The adequacy of the search will be described below.)

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 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.)

Here, the only misconduct which may be in issue is that of Appellant and, while disciplinary or other action may have been contemplated, the administrative record indicates that there is insufficient evidence to justify such action. Moreover, even if wrongdoing was present,[4] as we indicated in Freedom of Information Act Appeal 2011-36, the disclosure of the names of the witnesses and the investigators would add little, if anything, to the understanding of how the agency conducted the investigation and how it is discharging its mission. *See also Wood v. FBI*, 432 F.3d 78 (2d Cir. 2005) ("[R]evealing the identities of the investigators assigned to the case would add little to the public's understanding of how the FBI's OPR performed its duties given that the existence of the internal investigation and its outcome has been disclosed. . . . the public's interest in knowing the identities of the employees assigned to investigate the agents for purposes of administrative discipline is minimal at best and is insufficient to overcome the employees' interest in preventing the public disclosure of their names." *Id*. at 89-90.)

Accordingly, the public interest in disclosure of the identities of the employees does not outweigh the individual privacy interest.

As a fourth argument, Appellant contends that there are missing responsive records, including the decision of a named individual. While Appellant does not state it expressly, it is apparent that the basis of 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).

[4] We note that it would be a perverse irony to permit the wrongdoing of a requester to confer access to records while denying such access to one who is blameless. To be clear, as stated above, in the case of Appellant, MPD determined that there was insufficient evidence of wrongdoing.

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.

In the case of the Appeal, MPD has employed a search methodology was which was reasonably designed to locate the responsive records. Here, MPD identified the location where the requested records would be found, the investigative file maintained by its Internal Affairs Division, and the form in which such records would be maintained, that is, electronic and paper-based files, and the Internal Affairs Division searched the electronic and paper-based files for the requested records. Accordingly, we find the search by MPD was reasonable and adequate. As indicated above, the test is not whether additional records may exist, but whether the search, as here, was reasonably calculated to locate the responsive records. Nevertheless, MPD has proffered to conduct a supplemental search if Appellant can identify the additional records which were not produced but exist and we believe that such proffer remains notwithstanding our finding as to the adequacy of the search.

Conclusion

Therefore, the decision of MPD is upheld in part and is moot in part. The Appeal is dismissed.

The name and address of Appellant shall be redacted prior to publication of this decision.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-104

August 27, 2014

F. Scott Lucas, Esq.

Dear Mr. Lucas:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated August 8, 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 June 20, 2014 (the "FOIA Request") by failing to respond to the FOIA Request. The FOIA Request was sent to the Chancellor, not the agency FOIA officer.

Appellant's FOIA Request sought records regarding a named student. Appellant initiated the Appeal, stating that a response to the FOIA Request was not received.

In its response, dated August 27, 2014, DCPS provided a copy of a response to the FOIA Request, dated August 27, 2014, notwithstanding that a proper FOIA request must be directed to an agency FOIA officer. As DCPS has responded to the FOIA Request, we will now consider the Appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of DCPS.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Donna Whitman Russell, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-105

August 25, 2014

Ms. Saundra Taylor

Dear Ms. Taylor:

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 7, 2013 (the "Appeal"). You ("Appellant") assert that the Department of Employment Services ("DOES") improperly withheld records in response to your request for information under DC FOIA dated July 7, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought records of an investigation that was conducted by the Deputy Director for Labor Standards regarding her complaint to the Office of the Inspector General. By email dated July 28, 2014, DOES provided responsive records.

On Appeal, Appellant challenges the production of the requested records as incomplete, identifying certain records which DOES failed to provide, including a "missing final/last page 5/5" of one record which DOES sent.

In its response, by email dated August 20, 2014, DOES reaffirmed its position. DOES indicates that the requested records are likely to be found in the paper files for Appellant that exist in the Workers' Compensation program managed by DOES. DOES indicates further that the Deputy Director conducted the search of the paper files and provided all responsive records. DOES states that those records "do not include the page 5 of 5 that Ms. Taylor claims is in the possession of DOES." In addition, DOES invited Appellant to inspect all her files at the agency premises.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-

531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

While Appellant has not stated a specific ground for the Appeal, it is apparent that the basis of 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.

In the case of the Appeal, DOES has employed a search methodology was which was reasonably designed to locate the responsive records. Here, DOES identified the location where the requested records would be found, the records maintained by the Workers' Compensation program, and the form in which such records would be maintained, that is, paper-based files, and searched the paper-based files for the requested records. Moreover, the search was conducted by the employee identified by Appellant as the individual who made the investigation which was subject of the FOIA Request, which employee would be familiar with requested records. Accordingly, we find the search by DOES was reasonable and adequate. While Appellant may feel that DOES should have maintained the records which were not provided, as we have stated in prior decisions, DC FOIA provides no warrant to second-guess the management practices of an agency in the compilation and maintenance of its records.

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 TO THE MAYOR
Freedom of Information Act Appeal: 2014-106

August 21, 2014

Kathryn Grace, Esq.

Dear Ms. Grace:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated August 15, 2014 (the "Appeal"). You, on behalf of a client ("Appellant"), assert that the District of Columbia Fire and Emergency Medical Services Department ("FEMS") improperly withheld records in response to your requests for information under DC FOIA dated May 1, 2014 (the "FOIA Request) by failing to respond to the FOIA Request.

Appellant's FOIA Request sought records pertaining to a fire which occurred on June 5, 2013, at 1101 Pennsylvania Avenue, S.E. When FEMS failed to provide a response to the FOIA Request, Appellant initiated the Appeal.

In response to the Appeal, dated July 25, 2014, FEMS, through its FOIA Officer who assumed his duties subsequent to date of the FOIA Request, states that, based on investigation after receipt of the Appeal, the FOIA Request had not been entered into the agency tracking system, but that it is now in the process of searching, on an expedited basis, for all responsive records and will release such records, subject to review for any applicable exemptions. Based on the foregoing, we will now consider the Appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of FEMS.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Andrew Beaton

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-107

September 2, 2014

Mr. Tony Weems

Dear Mr. Weems:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated August 11, 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 July 21, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought records with respect to two complaints, providing complaint numbers, dates and locations of the incidents, the type of incident (rape), and names of the complainants.[1] In response, by letter dated August 1, 2014, MPD denied the FOIA Request, stating:

> After a comprehensive review of your request, it is hereby denied. The search and release of records on the individuals, other than yourself, without authorization from those individuals, would constitute a clearly unwarranted invasion of personal privacy pursuant to D.C. Official Code § 2-534(a)(2).

On Appeal, Appellant challenges the response of MPD.

In response, dated August 26, 2014, MPD reaffirmed its position, stating, in pertinent part:

> Persons identified in law enforcement records have an expectation of privacy whether they are complainants, witnesses, victims or offenders. This privacy interest can be

[1] Appellant submitted a request in 2005 with only complaint numbers. At that time, MPD advised him that it "recycled" complaint numbers and needed additional information, such as the date of incident, the location of incident, the type of incident (rape), and the names of the complainant. Although Appellant provided the information to MPD in 2005 and wrote a follow-up letter in 2008, apparently no final response was received. The FOIA Request is a re-submission of that request.

outweighed by a cognizable public interest in the release of information concerning the identified persons. Mr. Weems has not identified a public interest in the release of responsive documents.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The Appellant filed a FOIA Request which identified the dates and locations of alleged rapes and names of the complainants. Based on the identification of the complainants, MPD denied the FOIA Request ostensibly without performing any search as it was based on "a comprehensive review of [the] request" and, on Appeal, reaffirms its position with respect to "*any* responsive documents. [emphasis added]." Our past decisions, following applicable judicial precedent, have found that there is a sufficient personal privacy interest of the victim, suspects, or witnesses associated with a crime, alleged or proven, in law enforcement records, which interest must be outweighed by a public interest in disclosure. For example, in Freedom of Information Act Appeal 2013-1, where the appellant requested all records associated with an alleged assault, identifying the location, date, and alleged victim and alleged assailant, we found that there was a sufficient personal privacy interest of the victim, suspects, and witnesses justifying the assertion of the exemption for personal privacy under D.C. Official Code § 2-534(a)(3)(C), the counterpart of D.C. Official Code § 2-534(a)(2) applicable to law enforcement records. We note that, in that matter, MPD provided incident report (Form PD-251) to the appellant although it denied the remainder of the request.

As a matter of public record,[2] we have learned that the crimes with which Appellant has been charged includes rape. In Freedom of Information Act Appeal 2012-33, we indicated that a "first-party" request, that is, a request for one's own records, is not subject to the assertion of the privacy exemption and directed that such records be provided to the appellant, subject to any applicable exemption. Here, there may be statements made by Appellant to MPD among the records which would not implicate the privacy interest of any other individual. As we noted

[2] *Weems v. Rios*, 2008 U.S. Dist. LEXIS 71332 (E.D. Ky. 2008).

above, in Freedom of Information Act Appeal 2013-1, even where the assertion of the exemption for personal privacy was upheld, MPD was able to provide a responsive record to the appellant.

In the case of the Appeal, MPD has asserted the exemption on a categorical basis without making a search and determining the applicability of the exemption or the possibility of redaction with respect to the exemption. Notwithstanding a substantial likelihood that most of the records will qualify for exemption based upon the exemption for personal privacy, as we indicated above, it is possible that there are some responsive records which may be disclosed. This is not a case, like a so-called "Glomar" response, where the confirmation or denial of the existence of responsive records would, in and of itself, reveal exempt information. Accordingly, we direct MPD to search for the requested records and provide a response to Appellant based on the results of the search, which would include the assertion of any applicable exemptions.

Conclusion

Therefore, we remand this matter to MPD for disposition in accordance with this decision, without prejudice to challenge, by separate appeal, the response of MPD when made.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-108

September 16, 2014

Ms. Ryan M. Schuster

Dear Ms. Schuster:

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 July 21, 2014 (the "Appeal") in response to two similar, but separate requests for information. You assert that the Office of Unified Communications ("OUC") improperly withheld records in response to your request for information under DC FOIA dated April 1, 2014 (the "OUC FOIA Request"). You 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 March 7, 2014 (the "FEMS FOIA Request") by failing to respond to the FOIA Request.

Background

Appellant's OUC FOIA Request sought records pertaining to emergency response data:

1. "Computer Aided Dispatch (CAD) raw output" from the Metropolitan Police Department ("MPD") and FEMS.

2. "A record of 'erroneous calls'," that is, "in which the incorrect address was given to the unit that was dispatched."

3. "All Biannual Certification of EMS Response Times since 2007 and the methodology used . . ."

4. "Staffing data."

5. Inventories of MPD and FEMS vehicles "that are fit or service/current in use and vehicles that are unfit or service and currently under repair."

In response, by email dated March 28, 2014, MPD responded to the OUC FOIA Request, providing information in response to the OUC FOIA Request, characterized as being a request for information on MPD vehicles.

The FEMS FOIA Request sought the information in items 2 through 5 (except that it did not include a request regarding MPD vehicles). No response has been received by Appellant.

On Appeal, Appellant states, in pertinent part, that "OUC and FEMS FOIA offices have not responded to the full request in the required time frame."

In its response to the Appeal, dated September 5, 2014, FEMS, through its FOIA Officer who assumed his duties subsequent to date of the FOIA Request, states that, based on investigation after receipt of the Appeal, the FOIA Request had not been entered into the agency tracking system. Noting that "both the size and scope of production is large" in order to fulfill the FOIA Request, FEMS states that "the previous FOIA officer had not yet established a 'public data record set' containing incident and response data of the nature Ms. Schuster is requesting . . ." However, owing to other similar requests, FEMS states that it is compiling "a 36 element 'public data record set,' containing such data," but that a portion of the request will be denied because of "District privacy policy and record export capability for existing data applications." FEMS requests additional time to respond to the FOIA Request.

In order to clarify the record, FEMS was invited to supplement the response to indicate whether it had been determined, with respect to the four categories of the FEMS FOIA Request, that is, categories 2 through 5 above, whether or not responsive records exist as to those categories and the nature of such determination. FEMS provided a detailed response, summarized, in pertinent part, as follows.[1]

With respect to "Biannual Certification of EMS Response Times," the FEMS FOIA Officer states that he is "the individual responsible for producing EMS response time analytics" and that he is "unfamiliar with the meaning of the term 'Biannual Certification' as applied to 'EMS Response Times.'" He also indicates that "[t]his term may have been used previously, but, to the best of my knowledge, is not used now." Nonetheless, FEMS does provide links to records previously published documents which provide "EMS response times" and which it characterizes as responsive.

With respect to "Staffing data," FEMS provides a file which is

> a description of current firefighter, EMT and paramedic staffing by unit and position type (an existing document responsive to the FOIA request). The count of total apparatus is indicated by the "unit count" column. The count of total personnel assigned to each apparatus is indicated by the 'seat count/unit' column.

In addition, FEMS provides a link to a map of its station locations and states:

[1] A copy of the response, with responsive documents and links to responsive documents, was provided to Appellant.

> The description of each station on the map includes apparatus by unit number. Comparing the staffing plan, attached, by unit type and Fire and EMS station location will provide a count of personnel by station and location.

With respect to an inventory of FEMS vehicles "that are fit or service/current in use and vehicles that are unfit or service and currently under repair," FEMS first states that the terms "fit" and "unfit" are uncertain "as applied to fire trucks and ambulances." Nonetheless, FEMS indicates that the last "total fleet inventory" was completed on February 3, 2014 for a Council performance hearing and attaches a responsive record. In addition, it provides a link to "an audit and assessment of the fleet inventory and fleet maintenance operations completed by an independent consultant on 11/25/2014 [2013] (an existing document responsive to the FOIA request)."

FEMS also responds to the category "Computer Aided Dispatch (CAD) raw output." It states that the request for those records is denied on basis that the provision of the records would both constitute an unwarranted invasion of personal privacy exempt from disclosure under D.C Official Code § 2-534(a)(2) and would violate rules promulgated pursuant to Health Insurance Portability and Accountability Act of 1996.

Finally, FEMS reiterates its request for additional time to produce the "36 element public data record set."

OUC did not submit a response to the Appeal.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The Appeal involves two separate, but related FOIA requests which Appellant has consolidated for purposes of the Appeal. We will address each FOIA Request separately, beginning with FEMS.

As was the case in Freedom of Information Act Appeal 2014-106, the FEMS FOIA Officer assumed his duties subsequent to date of the FOIA Request. As was the case in such prior appeal, he has diligently worked to remedy the failure of FEMS to respond. In its initial response to the Appeal, FEMS requested additional time to create a dataset which it believes will be responsive to the FEMS FOIA Request. Aside from the question as to our authority to grant an extension,[2] it is unnecessary to consider an extension for such purpose. As we have stated in many decisions, most recently in Freedom of Information Act Appeal 2014-98, "under DC FOIA, an agency 'has no duty either to answer questions unrelated to document requests or to create documents.' *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985)." *Id*. FEMS has no obligation to provide records which are not in existence. Here, it is clear that the record which has identified as responsive did not exist and still does not exist. Accordingly, it is not a responsive record. While we understand that FEMS is preparing a record in response to Mayor's Order 2014-170, "Transparency, Open Government and Open Data Initiative," and that it believes that record will be responsive to the information sought as part of the FEMS FOIA Request, the record is not required to be created and provided pursuant to the FEMS FOIA Request.

Nevertheless, while the new record is not required to be created and provided, there remains the possibility that other responsive records may exist. Thus, the failure to respond to the FEMS FOIA Request remains in issue. Accordingly, we invited and received a supplement to the response to the Appeal to address such issue.

Although the OUC FOIA Request specified five categories of records sought, the FEMS FOIA Request sought records for four of the categories. Through its supplement, FEMS has provided a response to the FEMS FOIA Request as described hereafter. With respect to Biannual Certifications of EMS Response Times, FEMS indicates that it does not maintain the requested records, although it has provided hyperlinks to records which contain information on agency response times. With respect to staffing data, FEMS provides a record and a hyperlink to records which it indicates are responsive. With respect to an inventory of FEMS vehicles "that are fit or service/current in use and vehicles that are unfit or service and currently under repair," while indicating that the terms "fit" and "unfit" are unclear in the context of this category of the FEMS FOIA Request, it provides two records which it indicates are responsive. Thus, as to these categories of the FEMS FOIA Request, the issue is moot. However, if Appellant deems any of these responses to be deficient, Appellant may assert a challenge by separate appeal.

FEMS also provides a response—a denial—with respect to "Computer Aided Dispatch (CAD) raw output." However, this category was a request under the OUC FOIA Request, not the FEMS FOIA Request. While it is instructive to the extent that Appellant may be considering the submission of a new FOIA request to FEMS for such information, this category is not at issue with respect to the Appeal.

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[2] As we have indicated in past decisions, we read our jurisdiction under D.C. Official Code § 2-537(a) to be limited to adjudicating whether or not a record may be withheld. Thus, we could not grant an extension alone—at most, a decision ordering production of records (or a search to be performed) would designate an extended time for completion of such production or search.

There is one additional category in the FEMS FOIA Request, which, as set forth above, is: "A record of 'erroneous calls'," that is, "in which the incorrect address was given to the unit that was dispatched." Apparently by oversight, FEMS has not addressed this category of response. Accordingly, FEMS shall provide a response to Appellant with respect to this category of response on or before September 30, 2014.

With respect to the OUC FOIA Request, the administrative record indicates that OUC has responded to only one of the five categories of such request. As stated above, OUC has not provided a response to the Appeal. Thus, as of the date of this decision, it appears that OUC has not made any further response to the OUC FOIA Request. Accordingly, OUC shall respond to the remaining four categories of the OUC FOIA Request on or before September 30, 2014.[3]

Conclusion

With respect to OUC, the matter is remanded for disposition in accordance with this decision.

With respect to FEMS, the matter is remanded in part for disposition in accordance with this decision and is moot and dismissed in part; provided, that the dismissal shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of FEMS.

[3] In Freedom of Information Act Appeal 2014-99, MPD indicated that OUC manages the 911 call system for both MPD and FEMS. It also indicated that records of 911 calls which are dispatched are maintained by OUC on behalf of MPD, but MPD does not maintain the records directly. As we have indicated in prior decisions, under the test enunciated by the Supreme Court in *DOJ v. Tax Analysts*, 492 U.S. 136 (1989), agency records are those that are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request. *See*, e.g., Freedom of Information Act Appeal 2013-57 and Freedom of Information Act Appeal 2013-12. Just as we have expressed no opinion as to the sufficiency of the responses which have been made by FEMS pursuant to the FEMS FOIA Request, at this juncture, we express no opinion as to whether the records requested pursuant to the OUC FOIA Request are agency records.

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: Gregory M. Evans, Esq.
Andrew Beaton

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-109

September 5, 2014

Charles A. Moran, Esq.

Dear Mr. Moran:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated August 27, 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 July 24, 2014 (the "FOIA Request") by failing to respond to the FOIA Request.

Appellant's FOIA Request sought "all settlement agreement offers regarding the Individuals with Disabilities Education Act (20 U.S.C. § 1400, *et seq*.) for the 2012-2013 school year and the 2013-2014 school year that have the District of Columbia Public Schools as the local education agency." When DCPS failed to provide a response to the FOIA Request, Appellant initiated the Appeal.

In its response, dated September 5, 2014, DCPS stated that it has responded to the FOIA Request and provided a copy of the response to the FOIA Request, dated September 4, 2014. (During the course of the Appeal, the parties were able to clarify that a similar, subsequent request was in addition to, not an amendment of, the FOIA Request.) As DCPS has responded to the FOIA Request, we will now consider the Appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of DCPS.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Donna Whitman Russell, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-110

September 18, 2014

F. Scott Lucas, Esq.

Dear Mr. Lucas:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated August 28, 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 June 20, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought records regarding a named student, including security videotapes of an alleged sexual assault which occurred on school premises. Appellant initiated Freedom of Information Act Appeal 2014-104, stating that a response to the FOIA Request was not received, but, during the course of the appeal, DCPS responded to Appellant. Freedom of Information Act Appeal 2014-104 was dismissed as moot, but without prejudice to Appellant to assert any challenge, by separate appeal, to the response of DCPS. In its response, as it pertained to the security videotapes, DCPS stated that such videotapes "are not available under FOIA."

On Appeal, Appellant challenges the response of DCPS, asserting that its "refusal to produce a validly requested public record" was "legally insufficient." In pertinent part, Appellant states:

> DCPS has set forth a conclusory assertion that the information sought is not available under FOIA. There is no reference to statute or any other grounds of exemption. This is an insufficient response.

In its response, dated September 16, 2014, DCPS states that it "does not have any security videotapes of the alleged sexual assault" described in the FOIA Request. In response to an invitation to supplement the administrative record as to the manner in which the search was conducted, DCPS states, in pertinent part, as follows. DCPS records are maintained by the DCPS Office of School Security ("OSS"), which works with its contractor, Vision Security Solutions, for the extraction and acquisition of surveillance video. Here, OSS requested from MPD, which was in possession of the surveillance video, video recorded on April 30, 2014 from 2:55 PM to 3:30PM from cameras 18, 20, and 4 located at Charles Hart Middle School. After obtaining the video footage, OSS forwarded it to its contractor, which extracted the footage and

downloaded it a disk and delivered it to OSS. OSS determined that there were no recorded images of the alleged incident.

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 in the Appeal is the adequacy of the search by DCPS for any security videotapes of the alleged sexual assault described in the 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).

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.

In the case of the Appeal, DCPS has employed a search methodology was which was reasonably designed to locate the responsive records. Here, DCPS identified the location where the requested records would be found, its security division, OSS, which maintains surveillance video. OSS determined which security cameras would have responsive images, caused the relevant video based on the date and time of the alleged incident to be placed on a disk for viewing, and, upon viewing, determined that there were no responsive images. Accordingly, we find the search by DCPS was reasonable and adequate.

Conclusion

Therefore, the decision of DCPS is upheld. The Appeal is hereby dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Donna Whitman Russell, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-111

September 29, 2014

Ms. Tiffani Harris-Davis

Dear Ms. Harris-Davis:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated September 4, 2014 (the "Appeal"). You ("Appellant") assert that the Department on Disability Services ("DDS") improperly withheld records in response to your request for information under DC FOIA dated August 4, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought three specified records. The first record was a "June 2014 financial audit of the Randolph Sheppard Vending Facility program. The audit was performed by an independent contractor procured by DDS." In response, by letter emailed August 25, 2014, DDS provided responsive records for the second and third records requested, but stated as to the first item (the "Audit'): "There are no documents responsive to this request as the audit by an independent contractor is not complete."

On Appeal, Appellant challenges the failure of DDS to provide the Audit, stating that the Audit "was used in the decision to terminate me from my position" with the District government. "It is my understanding that the discrepancy of over $6000 cited in the termination notice was substantiated by a July 2014 audit conducted by an independent contractor procured by DDS."

In response, dated September 26, 2014, DDS reaffirmed its position, reiterating that "currently there are no documents responsive to Ms. Harris-Davis' request for 'audits performed by an independent contractor' as the independent contractor's audit is not complete."

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 Appellant alleges that the record in dispute, the Audit exists, but has not been furnished, the issue raised by this matter 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).

Here, the agency FOIA Officer, who is also its Acting General Counsel, states both in its response to the FOIA Request and its response to the Appeal that the Audit has not been completed. Although he has not expressly stated so, we would expect the agency General Counsel to be familiar with matters of this type and we find that his statement is credible.[1]

Appellant bases her claim under the Appeal on the statement in the termination notice that the action was "based on the agency's investigation" and her "understanding" that a cash discrepancy was substantiated by the Audit. However, in setting forth the circumstances surrounding her dismissal, Appellant states that the "DDS Human Capital Administrator and [ ] DDS Chief of Staff initiated an investigation of the RSVFP cash handling procedures." As DDS states that the Audit is not complete and Appellant states that it was simply her "understanding" that the Audit was used to substantiate findings, it appears that the agency investigation that was the basis for the termination was that of the Human Capital Administrator and Chief of Staff without the substantiation of an audit.

In the Appeal, Appellant maintains that her termination was not justifiable based on the facts and evidence. However, the merits of such position are beyond the scope of the Appeal and we do not express any opinion on such matter.

Conclusion

Therefore, the decision of DDS is upheld. The Appeal is dismissed.

[1] As we have stated in past decisions, while an agency has the burden to establish the adequacy of its search, an administrative appeal under DC FOIA is a summary process and we have not insisted on the same rigor in establishing the adequacy of a search as would be expected in a judicial proceeding.

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: Mark D. Back, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-112

October 6, 2014

Ms. Nadia Pflaum

Dear Ms. Pflaum:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated September 12, 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 June 13, 2014 (the "FOIA Request").

Appellant's FOIA Request sought "records related to enforcement decisions regarding DC security officers, including but not limited to suspensions and revocations of license, for the entire calendar year 2013." In response, by letter dated August 8, 2014, MPD denied the FOIA Request, stating that the disclosure of disciplinary records of private citizens who are employed as private security officers would constitute a clearly unwarranted invasion of personal privacy. On Appeal, Appellant states: "I would like the Office of the Mayor to review this request and the reason for rejection."

In its response to the Appeal, dated October 3, 2014, MPD stated that it is "providing the requested documents with 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 TO THE MAYOR
Freedom of Information Act Appeal: 2014-113

September 18, 2014

Ms. Amber Hardy

Dear Ms. Hardy:

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"), submitted September 16, 2014 (the "Appeal"). You ("Appellant") assert that the Department of Public Works ("DPW") improperly withheld records in response to your requests for information under DC FOIA submitted July 23, 2014 (the "FOIA Request) by failing to respond to the FOIA Request.

Appellant's FOIA Request sought records related to the towing and auctioning of her motor vehicle. Appellant initiated the Appeal, stating that an acknowledgment of the FOIA Request was sent but that a final response was not received.

The FOIA Request was made and processed through FOIAxpress, the electronic system recently instituted for the submission and processing of FOIA Requests. When our office checked the status of the FOIA Request through FOIAxpress, we found that DPW responded, by email, to the FOIA Request on August 13, 2014, which response included the attachment of responsive records. Apparently, there was a problem in the electronic delivery of the response. As Appellant has not received such records, DPW should re-transmit them to Appellant.

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 DPW.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Michael D. Kirkwood, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-114

September 29, 2014

Mr. Antoine Thompson

Dear Mr. Thompson:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated August 24, 2014 (the "Appeal"). You ("Appellant") assert that the District of Columbia Sentencing and Criminal Code Revision Commission (the "Commission") improperly withheld records in response to your request for information under DC FOIA dated July 7, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought "[a]ll documents pertaining to the requester going through the certification process for transferring the requester for criminal prosecution as an adult." In response, by letter dated July 14, 2014, the Commission stated that, after a search, it did not find any responsive records.

On Appeal, Appellant challenges the response to the FOIA Request as "false" and "incorrect" as he had provided a case number and "other information."

In its response, by letter emailed September 22, 2014, the Commission reaffirmed its position. The Commission states:

> The Commission does not possess or maintain any records relating to case transfers to adult criminal court. On July 14, 2014, the Commission searched its records using the defendant's name and case number. The search did not locate any records in the Commissions controller position relating to the defendants request.

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 Appellant disputes the credibility of the agency response that it has no responsive records, the issue raised by this matter 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).

Here, the agency FOIA Officer, who is also the General Counsel, states in its response to the Appeal that "[t]he Commission does not possess or maintain any records relating to case transfers to adult criminal court." Although he has not expressly stated so, we would expect the agency General Counsel to be familiar with the records that the agency maintains and we find that his statement is credible.[1] Moreover, the statutory mission of the Commission relates to promulgating, implementing, and revising voluntary sentencing guidelines; publishing a manual, and advising, on the application of voluntary sentencing guidelines; reviewing and analyzing pertinent sentencing data; disseminating information about the voluntary sentencing guidelines; reviewing and making recommendation regarding sentencing policies and practices; and making legislative recommendations to the Council and the Mayor. *See* D.C. Official Code §§ 3-101 and 3-101.01. The scope of the duties of the Commission would not require or contemplate the maintenance of records relating to case transfers to adult criminal court and this supports the statement of the agency FOIA Officer and General Counsel. We find that the Commission does not maintain the requested records.[2]

Conclusion

Based on the foregoing, the decision of the Commission is upheld. The Appeal is dismissed.

If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

[1] As we have stated in past decisions, while an agency has the burden to establish the adequacy of its search, an administrative appeal under DC FOIA is a summary process and we have not insisted on the same rigor in establishing the adequacy of a search as would be expected in a judicial proceeding.

[2] Notwithstanding the fact that the Commission does not maintain the type of records requested, we note that the Commission did make a search of its records using the name and case number of Appellant. As we do not know which records were searched and how the search was conducted, we cannot reach a conclusion as to the adequacy of its search method. However, given our finding, it is not necessary to decide this question.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Linden Fry, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal MLC2015-01

October 9, 2014

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 October 3, 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 April 16, 2014 (the "FOIA Request) by failing to respond to the FOIA Request. Appellant's FOIA Request sought records pertaining to the implementation of the Supervisory Support Program and a related database called the Personnel Performance Management System. When MPD failed to provide a response to the FOIA Request, Appellant initiated an appeal, Freedom of Information Act Appeal 2014-91, but, when MPD indicated that it would respond to Appellant, Freedom of Information Act Appeal 2014-91 was dismissed as moot, but without prejudice to Appellant to assert any challenge, by separate appeal, to the response of MPD. Appellant initiated the Appeal when it did not receive the promised response. However, on the date of the Appeal, Appellant copied this office on an email acknowledging receipt of the MPD response, re-transmitting a response originally sent on July 30, 2014 but which was apparently not received by Appellant. 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 TO THE MAYOR
Freedom of Information Act Appeal MLC2015-02

October 22, 2014

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 October 1, 2014 (the "Appeal"). You, on behalf of a client ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your requests for information under DC FOIA dated July 15, 2014 (the "FOIA Request) by failing to respond to the FOIA Request.

Appellant's FOIA Request sought records related to the acquisition and use by MPD of "stingray" technology. When MPD failed to provide a final response to the FOIA Request, Appellant initiated the Appeal.

In response to the Appeal, dated October 22, 2014, MPD stated that, by email on October 9, 2014, it provided responsive records to Appellant. 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 TO THE MAYOR
Freedom of Information Act Appeal MLC2015-03

October 21, 2014

Courtney French, Esq.

Dear Ms. French:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated September 29, 2014 (the "Appeal"). You, on behalf of a client ("Appellant"), assert that the Public Service Commission ("PSC") improperly withheld records in response to your request for information under DC FOIA dated August 29, 2014 (the "FOIA Request) by failing to respond to the FOIA Request.

Background

Appellant's FOIA Request sought a "redacted document . . . showing the 100 physical addresses of the main segments [of gas pipelines] with the highest project risk scores identified by Washington Gas Companies Optimain risk assessment tool." Appellant stated that the requested record could redact the last two digits of the number of any street address.

Appellant filed the Appeal on the basis that PSC failed to provide a response to the FOIA Request. Anticipating that PSC would assert the exemption for critical infrastructure information under D.C. Official Code § 2-534(a)(15), Appellant asserts that the record sought is not critical infrastructure information.

> The requested record concerns the structural integrity of gas pipelines and highlights locations of the Top 100 pipeline segments that may pose a risk to public safety due to corrosion or other structural defects. . . . This exemption is aimed at preventing terrorist attack on the country's critical infrastructure and would not apply to protect the location of pipelines that have structural integrity issues. *See* D.C. Code Sec. 2-593(3). The Top 100 document is intended to increase public safety by informing the public of the location of pipelines with structural defects. A document detailing the location of such pipelines would be of no more use to terrorists than other public resources such as 'Dial Before Digging' programs that reveal the location of underground gas pipelines.

In response to the Appeal, dated October 16, 2014, PSC presents a different procedural history. PSC states that Appellant submitted a previous FOIA request on August 4, 2014, which request was amended on August 14, 2019. PSC states further that Appellant submitted what PSC deemed to be a redundant request on August 29, 2014, which is the FOIA Request which Appellant has placed at issue. PSC also states that it sought clarification from Appellant as to its understanding and that Appellant indicated that such request was an amendment to the August 4 request. Finally, PSC states that, after providing an opportunity to Washington Gas Light Company ("Washington Gas") to review and object, it responded to the FOIA Request on September 19, 2014, which included the Optimain list with redactions for, among other items, project name, the entire address, and risk score. The redactions were based on the exemptions for critical infrastructure information under D.C. Official Code § 2-534(a)(15), confidential financial information whose disclosure would result in substantial harm to the competitive position of Washington Gas under D.C. Official Code § 2-534(a)(1), and a clearly unwarranted invasion of privacy under D.C. Official Code § 2-534(a)(2). After such redactions, minimal information remained. On Appeal, PSC reaffirms that it is justifying the redactions based on these exemptions.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

In the usual case where the basis of the appeal is the failure of the agency to respond to the FOIA request, once the agency responds, we will find that the case is moot and provide that any objection to the response to be raised in a separate appeal so that there will be an administrative record directed to the objection. In the case of the Appeal, without what it considered a response to the FOIA Request in hand, Appellant has anticipated the assertion of the exemption based on critical infrastructure information and made its argument based thereon and PSC, in kind, has had the opportunity to address such argument. Accordingly, we can adjudicate this claim of exemption as both parties have had the chance to address it.

D.C. Official Code § 2-534(a)(15)[1] provides an exemption from disclosure for:

> (15) Any critical infrastructure information or plans that contain critical infrastructure information for the critical infrastructures of companies that are regulated by the Public Service Commission of the District of Columbia.

D.C. Official Code § 2-539(a)(3) defines critical infrastructure information as

> information not customarily in the public domain that is related to the security of critical infrastructure of companies that are regulated by the Public Service Commission of the District of Columbia, including information regarding:
>
> (A) Actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates federal or District of Columbia laws, harms interstate commerce of the United States or the economy of the District of Columbia, or threatens public health or safety;
>
> (B) The ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation, risk-management planning, or risk audit; or
>
> (C) Any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

D.C. Official Code § 2-539(a)(2) defines critical infrastructure as

> existing and proposed infrastructure systems and assets, whether physical or virtual, so vital to the District of Columbia or the United States that the incapacity or destruction of the infrastructure system or asset could jeopardize the physical security, economic security, health, safety, or welfare of the public.[2]

PSC asserts the applicability of this exemption in conclusory fashion. However, it does attach to its response to the Appeal, the comments and analysis of Washington Gas which were solicited prior to the PSC response. With respect to the requested record, Washington Gas states, in pertinent part:

> [I]t contains the location and material type, length and size of planned facility replacements, as well as the prioritization of risk, by project as identified by location,

[1] At the time of the assertion of the exemption, this provision, with its associated definitions, had been enacted as temporary law. A permanent version of this provision has been enacted by the Council and is pending Congressional review.

[2] It should be noted that the numbering of these definitions is changed in the permanent version of the enactment of this exemption.

> which would expose the detailed location, design and operation of the Company's distribution system in the nation's capital. . . . Public disclosure of this type of information could be used in a planned attack on critical natural gas distribution infrastructure and thereby compromise not only the safety and security of the Company's distribution system but more importantly also the safety of the Company's customers and broader public.

It seems obvious based on common knowledge and a reading of the statutory exemption that such exemption applies to the requested record. Gas pipelines, here owned by Washington Gas, a company regulated by PSC, are a major component of the power supply system of the region and an attack on the pipelines could materially affect not only the financial and economic welfare of the region and its residents, with broader effects on the country as a whole, but would also create health and safety hazards for residents affected by a breach of the system. Disclosure of the record would provide to aspiring attackers not only the location and physical characteristics of the pipelines, information not generally known which would potentially enable an attack, but would also identify locations with physical weaknesses which may increase the chance of success of any attack. While the example in D.C. Official Code § 2-539(b)(2) does not directly describe the information sought by the FOIA Request, it does refer to "operational problem[s]," which phrase does describe the information in the record sought. We find that the record is critical infrastructure information of Washington Gas, a company regulated by PSC, and exempt from disclosure under D.C. Official Code § 2-534(a)(15).

Appellant advances only unsupported assertions for its position. It asserts, but does not explain why, the exemption "would not apply to protect the location of pipelines that have structural integrity issues."[3] Likewise, it asserts that the record "is intended to increase public safety by informing the public of the location of pipelines with structural defects," but does not explain how it has determined that the purpose of a list generated by an analysis of a private company was to inform the public as opposed to, for example, internal purposes. Finally, as to the assertion that disclosure of the record would have no more effect than a "'Dial Before Digging'" program, there seems to be a material difference between the availability to licensed, registered contractors and real property owners, both with addresses of record, of information that may or may not reveal the location of a pipeline at a single location and a road map to 100 pipeline locations with identified physical weaknesses.

While the FOIA Request sought a record which redacted the last two digits of the addresses for the locations of the pipelines, the arguments of the parties are directed to the applicability of the exemption to the unredacted record and do not address whether, or the extent to which, the record can be redacted.[4] As we have noted in past decisions, an administrative appeal under DC FOIA is a summary process. The extent to which redaction, either as proposed by Appellant or which may otherwise be available, will protect the critical infrastructure information requires factual analysis beyond the application of mere legal principles. We do not believe that it will be practicable to request supplements by the parties to the administrative record to address this issue

[3] Appellant does cite D.C. Official Code § 2-539(a)(3) for this proposition, but it is not apparent how this definition supports its argument.

[4] As we noted above, the record, as redacted, provided minimal information.

and render a decision within the prescribed statutory period. On its face, as to the addresses, it seems that it may be possible to construct a map using the 100 data points even with the redactions proposed by Appellant which would enable an individual or group to identify gas pipeline segments. In the absence of arguments which further elucidate this issue, we are unable to determine on the administrative record that the record can be disclosed even with redaction.

Conclusion

Therefore, the decision of PSC 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 District of Columbia Superior Court.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Richard Beverly, Esq.
Naza Shelley, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal MLC2015-04

October 27, 2014

Mr. Michael Volpe

Dear Mr. Volpe:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 14, 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 October 2, 2014 (the "FOIA Request").

Appellant's FOIA Request sought the police report on the suicide of a named individual. Appellant provided a date and location of the occurrence. In response, by letter dated October 14, 2014, MPD provided a responsive record, an "Incident-Based Police Report."

On Appeal, Appellant challenges the response to the FOIA Request, stating that he was provided a report about an occurrence which occurred at an apartment where the named individual was staying, but not about the suicide of such individual. In response, by letter dated October 27, 2014, MPD states that, upon receipt of the Appeal, it determined that "a search for the responsive record was conducted using an incorrect name" and that it provided the responsive record to Appellant on October 14, 2014, by email.

Based on the foregoing, we will now consider the Appeal to be moot and it is dismissed; provided, that if Appellant is not satisfied that the record which MPD provided to Appellant is responsive, Appellant may submit a request for reconsideration of this decision.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal MLC2015-05

October 28, 2014

Ms. Margaret Guroff

Dear Ms. Guroff:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 21, 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 on October 16, 2014 ("FOIA Request").

Background

Appellant's FOIA Request sought records regarding an incident which occurred on or about October 11, 2014 at 2352 Wisconsin Avenue, N.W. In response, by letter dated October 21, 2014, MPD stated that "the subject incident is currently part of an open investigation." It provided an Incident Report with redactions based on the exemptions from disclosure for personal privacy under D.C. Official Code § 2-534(a)(2) and (3)(C), but denied the remainder of the FOIA Request, stating that "the release of any information regarding an open case is exempt from disclosure under D.C. Official Code § 2-534 (a)(3)(A)(i)."

On Appeal, Appellant challenges the response to the FOIA Request to the extent that MPD did not provide the name of the individual arrested, stating as follows:

> I requested information regarding a sexual assault report at 2352 Wisconsin Avenue including, specifically, the name of the person arrested. The names of all defendants in the court system is public information, but there is no way for me to find this case in the court system without the defendant's name. I would like to again ask if the name of the arrested person, which I believe to be public information, can please be provided to me.

In its response, dated October 27, 2014, MPD reaffirmed its position. First, MPD states that release of responsive records would "subject[] the arrested person to embarrassment and possible harassment by members of the public for having been arrested for a heinous act." MPD also states that there is no public interest in the disclosure of the name of the arrested individual as any such disclosure "would not shed light on how the government is carrying out its responsibilities . . ." Second, as to the interference with enforcement proceedings, MPD states that "any document that contained the name of the arrested person would affect the police

investigation by alerting potential witnesses and enabling them the opportunity to tailor their statements to suit their own or the arrested person's 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.

While MPD has withheld multiple records and made several redactions, the only challenge by Appellant is to the withholding of the name of the individual arrested. MPD has indicated that there is still an open investigation. MPD bases the withholding of, or redaction of information in, records upon the exemptions from disclosure for personal privacy under D.C. Official Code § 2-534(a)(2) and (3)(C) and the exemption for interference with enforcement proceedings under D.C. Official Code § 2-534(a)(3)(A)(i). We will address each exemption in turn.

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 the records in this case involve the investigation of criminal matters,

The first part of the privacy analysis is whether a sufficient privacy interest exists regarding any individuals identified in the withheld records. 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).

As we have stated in past decisions, there is a sufficient individual privacy interest for a person who is being investigated for wrongdoing. The Supreme Court held that "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 780 (1989). "[I]nformation in an investigatory file tending to indicate that a named individual has been investigated for suspected criminal activity is, at least as a threshold matter, an appropriate subject for exemption under 7(C) [as noted above, D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]." *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 863 (D.C. Cir. 1981). The D.C. Circuit has also stated that nondisclosure is justified for documents that reveal allegations of wrongdoing by suspects who never were prosecuted. *See Bast v. U. S. Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981). As set forth above, the D.C. Circuit in the *Stern* case stated that individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity and that protection of this privacy interest is a primary purpose of the exemption in question.

Appellant contends that the "names of all defendants in the court system" are "public information." There is nothing in the administrative record as to the extent, if any, to which there have been associated court proceedings regarding the subject occurrence. However, even if there have been court proceedings in which the name of the arrested individual has been disclosed, such disclosure will not, by itself, vitiate his or her privacy interest. In Freedom of Information Act Appeal 2014-14, we stated:

> In Freedom of Information Act Appeal 2013-16, we rejected the argument that a sufficient privacy interest does not exist because the information has already been disclosed in court records which are publically available.
>
> > 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.*

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the exemption here is asserted under, and would be judged by the standard for, Exemption (3)(C).

> *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.

Drawing on such principle, in Freedom of Information Act Appeal 2013-19, we stated: 'The fact that information can be compiled if great effort or resources are devoted thereto does not make the information freely available.'

There is clearly a personal privacy interest of the individual arrested in disclosure of his or her name to the extent that it appears in the redacted or withheld records identified by MPD as responsive to the FOIA Request.

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).

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 MPD, the agency in question. Accordingly, under the principles set forth above, there is no public interest to overcome the privacy interest of the individual identified in the records. 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).[2]

[2] "'[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*."

Therefore, based on the foregoing, we find that the withholding or redaction of the name of the individual arrested by MPD was proper based on the exemption from disclosure for personal privacy under D.C. Official Code § 2-534(a)(3)(C). Accordingly, it will not be necessary to consider the exemption for interference with enforcement proceedings under D.C. Official Code § 2-534(a)(3)(A)(i).

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 TO THE MAYOR
Freedom of Information Act Appeal MLC2015-06

November 3, 2014

Ms. Alesia Hamilton

Dear Ms. Hamilton:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated August 26, 2014 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") and the Office of Unified Communications ("OUC") improperly withheld records in response to your requests for information under DC FOIA (the "FOIA Request").

Background

Appellant's FOIA Request, submitted to MPD by letter dated August 26, 2014, sought "a listing of all reported criminal activity" at a specified real property for a specified date range. In response, by letter dated May 28, 2014, MPD stated that it was "unable to fulfill requests for service information" and that "all requests for service information should be submitted directly" to OUC. Appellant states that she submitted the FOIA Request to OUC, but did not receive a response. On Appeal, Appellant challenges the failure of MPD or OUC to respond to "either request."

In its response, by letter emailed October 29, 2014, MPD reaffirmed its position. MPD reiterates that Appellant was advised that, "as of January 12, 2014, OUC would be handling FOIA requests for 'calls for service information.'" MPD states: "The department no longer maintains control of the 'calls for service information.'" In response to an invitation to supplement the administrative record to clarify the statement that "[t]he department no longer maintains control of the 'calls for service information,'" by letter dated October 31, 2014, MPD states that "calls for service information"

> encompass documents that reflect data relating to incoming telephone or police radio calls for police assistance. These documents, referred to by MPD internally as "event search summary" printouts reflect the time of the call, the unit assigned, action taken, and information relating to the caller. The printouts are prepared by the Office of Unified Communication (OUC).

As to legal authority and/or factual background regarding control, MPD indicates:

> The Chief of Police and the Director of the Office of Unified Communication agreed earlier this year that it was best that OUC have sole control over the handling of requests for 'calls for service' information. MPD was experiencing technical problems in producing this information and the two agency heads determined that OUC was better suited to produce the information in an expedient manner. The directors also decided that all requests for 911 recordings would be processed by OUC. Prior to this decision, MPD would process such requests after receiving the 911 recordings, if any, from OUC. Accordingly, MPD considered the 911 calls to be MPD records. OUC now has sole control over the processing of requests for 911 calls without obtaining permission from MPD on the handling of them. MPD deems calls for service documents and 911 calls to be OUC records.

OUC did not submit a response to the Appeal.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The FOIA Request sought "a listing of all reported criminal activity" at a specified real property for a specified date range. MPD interpreted the FOIA Request as "calls for service information." Based on the description provided to us by MPD, calls for service information appear to comprise audio or written records of 911 calls and dispatch calls to MPD units. While the FOIA Request would certainly include calls for service information, we read the FOIA Request as broader, giving effect to the general intent of such request beyond a literal construction. We believe that records would include other records related to criminal activity at the specified address. Such records would include, for example, incident reports, investigative materials, and other reports, generated from 911 calls, MPD responses to suspicious activity, or otherwise. As to records other than "calls for service information," it is clear that MPD has not made a search.

Therefore, as to such records, we direct that MPD conduct a search for such records and respond to Appellant.[1]

The other records which would be responsive to the FOIA Request are the previously-referenced calls for service information. MPD has taken the position that such records are not MPD records. OUC has neither responded to the FOIA Request nor to the Appeal.

In Freedom of Information Act Appeal 2013-13, we stated:

> DC FOIA requires production of records in the possession of an agency. D.C. Official Code § 2-532(a) provides, in pertinent part, that "[a]ny person has a right to inspect . . . any public record of a public body . . . in accordance with reasonable rules. . . " DCMR § 1-402.1 provides that "[a] request for a record . . . shall be directed to the particular agency." Under the test enunciated by the Supreme Court in *DOJ v. Tax Analysts*, 492 U.S. 136 (1989), agency records are those that are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request. The fact that another agency may possess the requested records does not absolve an agency receiving a request to conduct a search and produce any responsive records in its possession. *See* Freedom of Information Act Appeal 2012-54 (the fact that another agency maintained copies of contracts did not relieve agency of duty to search for, and produce, contracts). If the requested records are in the agency's possession, it cannot refuse to act on the request because the records originated elsewhere. *McGehee v. Cent. Intelligence Agency*, 697 F.2d 1095, 1110 (D.C. Cir. 1983). A referral to another agency after it has been determined that an agency does not maintain responsive records is appropriate, but it is not appropriate in lieu of a proper determination that it does not possess such records.

In Freedom of Information Act Appeal 2014-99, MPD indicated that OUC manages the 911 call system for both MPD and the Fire and Emergency Medical Services Department and calls which OUC dispatches to MPD are MPD records. Thus, while OUC may have possession of records regarding calls, OUC does so on behalf of MPD and, thus, MPD controls such records. *See* Freedom of Information Act Appeal 2013-04 and Freedom of Information Act Appeal 2013-64, and Freedom of Information Act Appeal 2013-73/75 (records transferred to archives are in control of the transferor agency, notwithstanding the fact that such records are stored offsite.)

Here, MPD cites an agreement between MPD and OUC whereby all FOIA requests calls for service information will be processed by OUC. While this arrangement is sensible insofar as government efficiency is concerned, this arrangement cannot alter the established procedure for requesters under DC FOIA. In Freedom of Information Act Appeal 2013-04 and in Freedom of Information Act Appeal 2014-01, we held in each case that the agency did not fulfill its statutory obligations by furnishing names of employees who could provide assistance.

[1] As to records other than "calls for service information," it is also clear that the FOIA Request would not have been sent to OUC other than as a result of the direction of an MPD employee. Accordingly, a search by OUC for such records will not be ordered here.

> [A] referral by a FOIA officer to another employee or employees does not satisfy an agency obligation under DC FOIA. The FOIA officer must conduct a search, consulting with other employees as may be necessary or appropriate, and notifying the requester whether responsive records will be produced.

Freedom of Information Act Appeal 2013-04. Likewise, in the case of the Appeal, MPD cannot simply refer the requester to another agency where, as here, a request is made for an MPD record. While it can refer the request to another agency, here OUC, and have OUC conduct the search and produce any responsive records on its behalf, it cannot shift the burden to the requester to do so.

Accordingly, we are directing that a search for responsive records relating to calls for service information be conducted. As the FOIA Request was submitted to both MPD and OUC, and in light of the arrangement between MPD and OUC, both agencies shall be responsible for compliance with this order, although we are indifferent as to which agency fulfills such responsibility.[2]

Conclusion

Based on the foregoing, this matter is reversed and remanded. As provided above, MPD and OUC shall conduct a search and provide any responsive records for calls for service information, subject to the assertion of any applicable exemptions. As to records other than calls for service information, MPD and OUC shall conduct a search and provide any responsive records, subject to the assertion of any applicable exemptions.

This order shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of MPD or OUC pursuant to this order.

[2] We are troubled by the failure of OUC to respond both to the FOIA Request and the Appeal. While OUC may have raised the issue as to whether calls for service information are records of OUC, we deem OUC to have waived consideration of this issue by its failure to respond to the 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: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.
Gregory Evans, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal MLC2015-07

October 23, 2014

Mr. Kenard E. Johnson

Dear Mr. Johnson:

This letter responds to your letter dated October 15, 2014, to the Mayor for a review of the failure by the Court Services and Offender Supervision Agency ("CSOSA") to respond to your request for records under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"). We are unable to address your request as the Mayor only reviews appeals under DC FOIA for District government executive branch agencies. CSOSA was established as a federal agency under section 333 of the National Capital Revitalization and Self-Government Improvement Act of 1997 and DC FOIA does not apply to federal agencies. You may wish to address your request to CSOSA under the federal FOIA. The address listed on the CSOSA website for such requests is: Sheila Stokes, Acting General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, N.W., Room 1374, Washington, D.C. 20004. Your original request may not have reached the CSOSA FOIA Officer.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2015-08

November 21, 2014

Mr. Justin Maddox

Dear Mr. Maddox:

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"), received November 4, 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 received October 15, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought "corporate formation information for businesses in the District," specifically:

> 1) How many corporations are formed annually in the District (ie District formed LLCs, C-Corps, S- corps, B corps, Limited Partnerships etc)
> 2) How many foreign applications are filed annually (ie US corporations etc formed in another state but operating in DC)
> 3) The total number of corporations currently operating in the district and how many of them are DC formed businesses.

In response, by email dated October 29, 2014, DCRA denied the FOIA Request on the basis of D.C. Official Code § 2-532(c), which "provides that a request for documents must 'reasonably describe' the records requested." In particular, DCRA stated that the FOIA Request "does not specify the documents sought sufficiently enough to enable a search to be conducted for documents for this element of your request."

DCRA invited Appellant to contact it to "revise or clarify" the FOIA Request. It advised Appellant that "all agency records pertaining to corporation data would be indexed by entity name or new corporations formed monthly."

It also advised that

> FOIA does not require the agency to create new records or to sort or prepare data in order to respond to a request, only to provide existing records or records regularly created in the ordinary course of business. Please also note that DCRA does not maintain a single comprehensive list of the items requested, accordingly there are no documents responsive to these elements of your request.

Finally, it advised that "FOIA does not require the agency to answer written questions in order to respond to a request, only to provide existing documents responsive to a request."

DCRA indicated that, based on the foregoing reasons, it did not conduct a search.

On Appeal, Appellant challenges the denial of the FOIA Request. "I would be absolutely shocked if the office of Corporate registration didn't keep track of the number of corporations that are registered annually. . . . it should take less than an hour to send the data to me."

In response, dated November 20, 2014, DCRA stated that on November 5, 2014, Appellant met with the DCRA representative who responded to the FOIA Request and "they were able to define the documents that Mr. Maddox was seeking." As a result of the meeting, DCRA conducted a search and provided responsive records to Appellant.

Conclusion

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 DCRA.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Tania Williams
Brandon Bass