VOL. 64 – NO. 37 SEPTEMBER 15, 2017

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council schedules a public hearing on Bill 22-0353, Community Residential Facilities Third-Party Notice of Utility Disconnection Requirement Act of 2017
- Alcoholic Beverage Regulation Administration schedules a public hearing on the proposed rulemaking to amend Chapters 1, 2, 3, 5, 7, 8, 9, 10, 12, 13, 15, 16, and 17 of Title 23 of the District of Columbia Municipal Regulations
- Concealed Pistol Licensing Review Board issues a guidance document on the Board's interpretation of the Title 1 D.C. Municipal Regulations relating to the administrative disposition of certain appeals
- Department of Employment Services proposes a new transit benefit program for covered employers
- Department of Energy and Environment proposes changes to the District's water quality standards
- Department of For-Hire Vehicles schedules a public hearing on the proposed amendments to the District's taxicab modernization standards
- Department of Human Resources updates guidelines and restrictions on the use of leave
- Mayor's Office of Legal Counsel publishes Freedom of Information Act Appeals

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances publishes the *District of Columbia Register* (ISSN 0419-439X) every Friday under the authority of the *District of Columbia Documents Act*, D.C. Law 2-153, effective March 6, 1979, D.C. Official Code § 611 et *seq*. (2012 Repl.). The policies which govern the publication of the *Register* are set forth in the Rules of the Office of Documents and Administrative· Issuances (1 DCMR §§300, *et seq.*). The Rules of the Office of Documents and Administrative Issuances are available online at dcregs.dc.gov. Rulemaking documents are also subject to the requirements of the *D.C. Administrative Procedure Act*, D.C. Official Code §§2-50l et *seq.* (2012 Repl.).

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

Deadlines for Submission of Documents for Publication

The Office of Documents and Administrative Issuances accepts electronic documents for publication using a Web-based portal. To submit documents for publication, agency heads, or their representatives, may obtain a username and password by email at dcdocuments@dc.gov. For guidelines on how to format and submit documents for publication, email dcdocuments@dc.gov.

The deadline for filing documents for publication for District of Columbia Agencies, Boards, Commissions, and Public Charter schools is THUSDAY, NOON of the previous week before publication. The deadline for filing documents for publication for the Council of the District of Columbia is WEDNESDAY, NOON of the week of publication. If an official District of Columbia government holiday falls on Thursday, the deadline for filing documents is Wednesday. Email the Office of Documents and Administrative Issuances at dcdocuments@dc.gov to request the *District of Columbia Register* publication schedule.

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Legal Effect of Publication - Certification

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

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

RM 520 – 441 4th ST, ONE JUDICIARY SQ. - WASHINGTON, D.C. 20001 - (202) 727-5090

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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Council of the District of Columbia
COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

COUNCILMEMBER KENYAN R. MCDUFFIE, CHAIRPERSON
COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT

ANNOUNCES A PUBLIC HEARING ON

B22-0335 – THE "WARD 4 FULL-SERVICE GROCERY STORE AMENDMENT ACT OF 2017"; AND

B22-0353 – THE "COMMUNITY RESIDENTIAL FACILITIES THIRD-PARTY NOTICE OF UTILITY DISCONNECTION REQUIREMENT ACT OF 2017"

Monday, October 2, 2017, 11:00 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On Monday, October 2, 2017, Councilmember Kenyan R. McDuffie, Chairperson of the Committee on Business and Economic Development, will hold a public hearing on Bill 22-0335, the "Ward 4 Full-Service Grocery Store Amendment Act of 2017"; and Bill 22-0353, the "Community Residential Facilities Third-Party Notice of Utility Disconnection Requirement Act of 2017". The hearing will be held in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 11:00 a.m.

The stated purpose of B22-0335 is to create an exception to the class B retailer's license moratorium in Ward 4 for full-service grocery stores.

The stated purpose of B22-0353 is to require any company providing utility services operating in the District of Columbia to provide 30 days notice to managing agencies of community residential facilities prior to disconnecting services, and to require community residential facilities to list the managing agency as a third-party contact with any company furnishing that facility with utility services.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact Brittani McKnight at (202) 727-6683, or via e-mail at BMcknight@dccouncil.us, and provide their name, telephone number, organizational affiliation,

and title (if any) **by close of business, September 28, 2017.** Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witness should bring **15, single-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically to BMcknight@dccouncil.us.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted either to the Committee or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on October 17, 2017.**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
9/15/2017

Notice is hereby given that:
License Number: ABRA-074002 **License Class/Type: B Retail - Grocery**
Applicant: Fa Ren Chen
Trade Name: China Hut
ANC: 4A02

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

7708 GEORGIA AVE NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:
10/30/2017

A HEARING WILL BE HELD ON:
11/13/2017

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	9 am - 10 pm	9 am - 10 pm
Monday:	9 am - 10 pm	9 am - 10 pm
Tuesday:	9 am - 10 pm	9 am - 10 pm
Wednesday:	9 am - 10 pm	9 am - 10 pm
Thursday:	9 am - 10 pm	9 am - 10 pm
Friday:	9 am - 10 pm	9 am - 10 pm
Saturday:	9 am - 10 pm	9 am - 10 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	September 15, 2017
Protest Petition Deadline:	October 30, 2017
Roll Call Hearing Date:	November 13, 2017
Protest Hearing Date:	January 10, 2018

License No.:	ABRA-107710
Licensee:	City Winery DC, LLC
Trade Name:	City Winery
License Class:	Retailer's Class "C" Restaurant
Address:	1350 Okie Street, N.E.
Contact:	Stephen J. O'Brien: (202) 625-7700

WARD 5 ANC 5D SMD 5D01

Notice is hereby given that this licensee 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 **Roll Call Hearing date on November 13, 2017 at 10 a.m., 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 on **January 10, 2018 at 1:30 p.m.**

NATURE OF OPERATION

New Class "C" Restaurant with Wine Pub Permit serving high-end food and alcoholic beverages, and also presenting intimate concerts and wine classes. Total Occupancy Load of 1000. Offering 4 Summer Gardens on 3 different floors with 625 total seating. The second floor Summer Garden will seat 75 patrons, the third floor Summer Garden will seat 225 patrons, and two rooftop Summer Gardens on the fourth floor will seat 40 and 185 patrons, respectively. Requesting an Entertainment Endorsement to provide Live Entertainment, Dancing, and Cover Charge.

HOURS OF OPERATION, ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION, AND LIVE ENTERTAINMENT INDOORS AND FOR OUTDOOR SUMMER GARDENS

Sunday through Thursday 8:00 am - 2:00 am, Friday and Saturday 8:00 am - 3:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
9/15/2017

Notice is hereby given that:
License Number: ABRA-075795 **License Class/Type: B Retail - Grocery**
Applicant: Lusk's Corporation
Trade Name: Eddie's Carryout
ANC: 5D03

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

1251 BLADENSBURG RD NE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:
10/30/2017

A HEARING WILL BE HELD ON:
11/13/2017

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	12 pm - 1 am	12 pm - 12midnight
Monday:	10:30 am - 12	10:30 am - 12midnight
Tuesday:	10:30 am - 12	10:30 am - 12midnight
Wednesday:	10:30 am - 12	10:30 am - 12midnight
Thursday:	10:30 am - 12	10:30 am - 12midnight
Friday:	10:30 am - 1 am	10:30 am - 12midnight
Saturday:	10:30 am - 1 am	10:30 am - 12midnight

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
9/15/2017

Notice is hereby given that:
License Number: ABRA-060236 **License Class/Type: B Retail - Grocery**
Applicant: Albo Corp
Trade Name: Eleven Market
ANC: 1B02

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

1936 11TH ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:
10/30/2017

A HEARING WILL BE HELD ON:
11/13/2017

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	9 am - 12 am	9 am - 12 am
Monday:	8 am - 12 am	8 am - 12 am
Tuesday:	8 am - 12 am	8 am - 12 am
Wednesday:	8 am - 12 am	8 am - 12 am
Thursday:	8 am - 12 am	8 am - 12 am
Friday:	8 am - 12 am	8 am - 12 am
Saturday:	8 am - 12 am	8 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
9/15/2017

Notice is hereby given that:
License Number: ABRA-107228 **License Class/Type: B Retail - Grocery**
Applicant: TSEDAL, LLC
Trade Name: Fabulous Market
ANC: 2A03

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

2424 PENNSYLVANIA AVE NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:
10/30/2017

A HEARING WILL BE HELD ON:
11/13/2017

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	7 am - 10 pm	9 am - 10 pm
Monday:	7 am - 10 pm	9 am - 10 pm
Tuesday:	7 am - 10 pm	9 am - 10 pm
Wednesday:	7 am - 10 pm	9 am - 10 pm
Thursday:	7 am - 10 pm	9 am - 10 pm
Friday:	7 am - 10 pm	9 am - 10 pm
Saturday:	7 am - 10 pm	9 am - 10 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
9/15/2017

Notice is hereby given that:
License Number: ABRA-107224 **License Class/Type: B Retail - Grocery**
Applicant: B & B Corners Market, LLC
Trade Name: Four Corners Market
ANC: 4D02

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

440 KENNEDY ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:
10/30/2017

A HEARING WILL BE HELD ON:
11/13/2017

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	7 am - 12 am	8 am - 12 am
Monday:	7 am - 12 am	8 am - 12 am
Tuesday:	7 am - 12 am	8 am - 12 am
Wednesday:	7am - 12 am	8 am - 12 am
Thursday:	7am - 12 am	8 am - 12 am
Friday:	7 am - 12 am	8 am - 12 am
Saturday:	7 am - 12 am	8 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	September 15, 2017
Protest Petition Deadline:	October 30, 2017
Roll Call Hearing Date:	November 13, 2017
Protest Hearing Date:	January 10, 2018
License No.:	ABRA-107397
Licensee:	JJ Restaurant, Inc.
Trade Name:	JJ Restaurant
License Class:	Retailer's Class "C" Restaurant
Address:	3931 14th Street, N.W.
Contact:	Francisco Nunez: (202) 830-7979

WARD 4 ANC 4C SMD 4C05

Notice is hereby given that this licensee 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 **Roll Call Hearing date on November 13, 2017 at 10 a.m., 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 on **January 10, 2018 at 1:30 p.m.**

NATURE OF OPERATION
New class "C" restaurant serving American and Spanish influenced foods. Applicant has also requested a Sidewalk Café with 12 seats and an Entertainment Endorsement to include Dancing. Total Occupancy Load of 70.

HOURS OF OPERATION INDOORS
Sunday through Saturday 6 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INDOORS
Sunday through Thursday 11 am – 2 am, Friday and Saturday 11 am – 3 am

HOURS OF OPERATION FOR SIDEWALK CAFÉ
Sunday through Saturday 8 am – 11 pm

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SIDEWALK CAFÉ
Sunday through Saturday 11am – 11 pm

HOURS OF LIVE ENTERTAINMENT INDOORS ONLY
Sunday 7 pm - 2 am, Thursday through Saturday 7 pm – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
9/15/2017

Notice is hereby given that:
License Number: ABRA-078591 **License Class/Type: B Retail - Grocery**
Applicant: Kono Gemechu
Trade Name: Kearney's Grocery
ANC: 5E05

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

90 O ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:
10/30/2017

A HEARING WILL BE HELD ON:
11/13/2017

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	8 am - 10 pm	9 am - 9 pm
Monday:	8 am - 10 pm	9 am - 9 pm
Tuesday:	8 am - 10 pm	9 am - 9 pm
Wednesday:	8 am - 10 pm	9 am - 9 pm
Thursday:	8 am - 10 pm	9 am - 9 pm
Friday:	8 am - 10 pm	9 am - 9 pm
Saturday:	8 am - 10 pm	9 am - 9 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
9/15/2017

Notice is hereby given that:
License Number: ABRA-078461 **License Class/Type: B Retail - Grocery**
Applicant: M & M Beer & Wine, Inc.
Trade Name: M & M Market
ANC: 7F06

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

3544 EAST CAPITOL ST NE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:
10/30/2017

A HEARING WILL BE HELD ON:
11/13/2017

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	6 am - 6 am	7 am - 12 am
Monday:	6 am - 6 am	7 am - 12 am
Tuesday:	6 am - 6 am	7 am - 12 am
Wednesday:	6 am - 6 am	7 am - 12 am
Thursday:	6 am - 6 am	7 am - 12 am
Friday:	6 am - 6 am	7 am - 12 am
Saturday:	6 am - 6 am	7 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****READVERTISEMENT**

**Placard Posting Date:	September 15, 2017
**Protest Petition Deadline:	October 30, 2017
**Roll Call Hearing Date:	November 13, 2017

License No.:	ABRA-087558
Licensee:	Hoost, LLC
Trade Name:	Nomad Hookah Bar
License Class:	Retailer's Class "C" Tavern
Address:	1200 H Street, N.E.
Contact:	Anise Amri: (202) 326-6623

WARD 6 ANC 6A SMD 6A01

Notice is hereby given that this licensee has requested to a substantial change 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 on **November 13, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF OPERATION
Applicant requests a Change of Hours of Operation and Alcoholic Beverage Sales for Sidewalk Cafe.

CURRENT HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION INSIDE PREMISE
Sunday through Thursday 11:00 am to 2:00 am, Friday and Saturday 11:00 am to 3:00 am

CURRENT HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE
Sunday through Thursday 11:00 am to11:00 pm, Friday and Saturday 11:00 am to 12:00 am

PROPOSED HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE
Sunday through Thursday 11:00 am to11:00 pm, Friday and Saturday 11:00 am to 2:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

**Placard Posting Date:	August 25, 2017
**Protest Petition Deadline:	October 10, 2017
**Roll Call Hearing Date:	October 23, 2017

License No.:	ABRA-087558
Licensee:	Hoost, LLC
Trade Name:	Nomad Hookah Bar
License Class:	Retailer's Class "C" Tavern
Address:	1200 H Street, N.E.
Contact:	Anise Amri: (202) 326-6623

WARD 6 ANC 6A SMD 6A01

Notice is hereby given that this licensee has requested to a substantial change 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 on **October 23, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF OPERATION
Applicant requests a Change of Hours of Operation and Alcoholic Beverage Sales for Sidewalk Cafe.

CURRENT HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION INSIDE PREMISES
Sunday through Thursday 11:00 am to 2:00 am, Friday and Saturday 11:00 am to 3:00 am

CURRENT HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE
Sunday through Thursday 11:00 am to11:00 pm, Friday and Saturday 11:00 am to 12:00 am

PROPOSED HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE
Sunday through Thursday 11:00 am to 11:00 pm, Friday and Saturday 11:00 am to 2:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
9/15/2017

Notice is hereby given that:
License Number: ABRA-090283 **License Class/Type: B Retail - Class B**
Applicant: EMHAN, LLC
Trade Name: Rainbow Market
ANC: 4D01

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

626 KENNEDY ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:
10/30/2017

A HEARING WILL BE HELD ON:
11/13/2017

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	8 am - 10:30 pm	9 am - 10 pm
Monday:	8 am - 10:30 pm	9 am - 10 pm
Tuesday:	8 am - 10:30 pm	8 am - 10 pm
Wednesday:	8 am - 10:30 am	9 am - 10 pm
Thursday:	8 am - 10:30 pm	9 am - 10 pm
Friday:	8 am - 10:30 pm	9 am - 10 pm
Saturday:	8 am - 10:30 pm	9 am - 10 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	September 15, 2017
Protest Petition Deadline:	October 30, 2017
Roll Call Hearing Date:	November 13, 2017
Protest Hearing Date:	January 10, 2018

License No.:	ABRA-103124
Licensee:	Four Brothers, LLC
Trade Name:	Rioja Market
License Class:	Retailer's Class "B"
Address:	1824 Columbia Road, N.W.
Contact:	Andrew Kline: (202) 686-7600

WARD1 ANC 1C SMD 1C03

Notice is hereby given that this licensee has requested to transfer the license to a new location 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 on November 13, 2017 at 10 a.m., 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 on **January 10, 2018 at 4:30 p.m.**

NATURE OF OPERATION

Licensee requests to transfer license from 1813 Columbia Road, N.W. to a new location at 1824 Columbia Road, N.W. Establishment is a Retailer's Class B which sells groceries, beer and wine.

CURRENT HOURS OF OPERATION

Sunday through Saturday 7am – 12am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 9am – 10pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
9/15/2017

Notice is hereby given that:
License Number: ABRA-087621 **License Class/Type: B Retail - Class B**
Applicant: Shipley Supermarket, Inc
Trade Name: Shipley Supermarket
ANC: 8B06

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

2283 SAVANNAH ST SE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:
10/30/2017

A HEARING WILL BE HELD ON:
11/13/2017

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	8 am - 10 pm	8 am - 10 pm
Monday:	8 am - 10 pm	8 am - 10 pm
Tuesday:	8 am - 10 pm	8 am - 10 pm
Wednesday:	8 am - 10 pm	8 am - 10 pm
Thursday:	8 am - 10 pm	8 am - 10 pm
Friday:	8 am - 10 pm	8 am - 10 pm
Saturday:	8 am - 10 pm	8 am - 10 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING
TECHNICAL AMENDMENT

10:00 A.M., WEDNESDAY, OCTOBER 18, 2017
ALCOHOLIC BEVERAGE CONTROL BOARD HEARING ROOM
2000 14TH ST., N.W., SUITE 400 SOUTH, 4TH FLOOR
WASHINGTON, D.C. 20009

The Alcoholic Beverage Control Board (Board) will hold a hearing from 10 a.m.-noon on Wednesday, October 18, 2017, to receive public comment on its proposed rulemaking that would make changes to several chapters of Title 23 of the District of Columbia Municipal Regulations. Affected chapters include 1-3, 5, 7-10, 12, 13 and 15-17. Complete details are available in the Board's Technical Amendment Notice of Proposed Rulemaking.

WHEN: 10 a.m. on Wednesday, October 18, 2017
WHERE: Alcoholic Beverage Control Board Hearing Room, 2000 14th St., N.W., Suite 400 South,
4th Floor, Washington, D.C. 20009

Members of the public can provide comments on the proposed rulemaking either at the Board's hearing or by submitting written comments.

Individuals and representatives of organizations that want to testify in person at the hearing should contact Alcoholic Beverage Regulation Administration (ABRA) General Counsel Martha Jenkins by **5 p.m. on Friday, October 13, 2017** by either:

- Emailing: Include full name, title, and organization, if applicable, of the person(s) testifying in the email); or
- Calling: (202) 442-4456.

Witnesses should bring six copies of the testimony to the hearing. Testimony may be limited to five minutes in order to permit each person an opportunity to be heard.

Members of the public that are unable to testify in person are encouraged to provide written comments, which will be made a part of the Board's official record. Copies of written statements should be submitted to ABRA General Counsel Martha Jenkins no later than **5 p.m. on Friday, October 27, 2017**, by:

- Emailing: Include full name, title, and organization, if applicable, of the person(s) testifying in the email); or
- Mailing: Alcoholic Beverage Regulation Administration, 2000 14th St., N.W., Suite 400 South, 4th Floor, Washington, D.C. 20009.

-www.abra.dc.gov-

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARING

11:30 A.M., WEDNESDAY, SEPTEMBER 20, 2017
ALCOHOLIC BEVERAGE CONTROL BOARD HEARING ROOM
2000 14TH ST., N.W., SUITE 400 SOUTH, 4TH FLOOR
WASHINGTON, D.C. 20009

The Alcoholic Beverage Control Board (Board) will hold a hearing to receive public comment on a proposal from the Dupont Circle Citizens Association (DCCA) to extend alcohol licensing restrictions in the East Dupont Circle Moratorium Zone (23 DCMR § 306) for another three to five years.

The East Dupont Circle Moratorium Zone limits the number of alcoholic beverage licenses that can be issued in an area extending 600 feet in all directions from the intersection of 17th and Q streets, N.W. Restrictions of the moratorium include a limit of two licenses that may be issued to taverns and does not permit any licenses to be issued to nightclubs.

The DCCA's proposal can be reviewed on ABRA's website. Members of the public can provide comment on the DCCA's proposal either at the Board's hearing or by submitting written comment.

HEARING INFORMATION

WHEN: 11:30 a.m. on Wednesday, September 20, 2017
WHERE: Alcoholic Beverage Control Board Hearing Room, 2000 14th St., N.W., Suite 400 South,
4th Floor, Washington, D.C. 20009

Individuals and representatives of organizations that want to testify in person at the hearing should contact ABRA General Counsel Martha Jenkins by 5 p.m. on Monday, September 18, 2017 by either:

- Emailing: Include the full name, title, and organization, if applicable, of the person testifying; or
- Calling: (202) 442-4456.

Any person providing testimony should bring six copies to the hearing. Testimony may be limited to five minutes in order to permit each person an opportunity to be heard.

Any person that cannot attend the hearing but wants to comment in writing on the proposal can do so no later than Wednesday, September 25, 2017. Written comment

should include the full name, title, and organization, if applicable, of the person providing comment and may be submitted by either:

- Email; or
- Mail: Alcoholic Beverage Regulation Administration, 2000 14th St., N.W., 4th Floor, Suite 400 South, Washington, D.C. 20009.

www.abra.dc.gov

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF FOR-HIRE VEHICLES

NOTICE OF PUBLIC HEARING

Notice of Consideration of Proposed Amendments to
Title 31 (Taxicabs and Public Vehicles for Hire)
of the District of Columbia Municipal Regulations:
Emergency and Proposed Modernization Rules

Friday, September 22, 2017
10:00 AM

The Department of For-Hire Vehicles announces a public hearing seeking stakeholder input on the Emergency and Proposed Modernization Rules, which were adopted August 28th and published in the September 1st *DC Register*. The rules require all taxicabs to transition from the legacy Modern Taximeter Systems to new Digital Taxicab Solutions by October 31st. The Department of For-Hire Vehicles ("DFHV") has scheduled a Public Hearing at 10:00 am on Friday, September 22, 2017 at 2235 Shannon Place, SE, Washington, DC 20020, inside the Hearing Room, Suite 2032.

Those interested in speaking at the hearing should register by calling 202-645-6002 not later than Thursday, September 21 at 3:00 pm. Testimony will be limited to the specific subject matter of this public hearing. Each participant will be allotted up to five (5) minutes to present. Participants must submit ten (10) copies of their written testimony to the Secretary of the Department of For-Hire Vehicles, 2235 Shannon Place SE, Suite 3001, Washington, D.C. 20020, in advance of the hearing. All speakers should be prepared to answer questions that may be posed by the Department during the hearing.

This public hearing is for the purpose of gaining advance public and industry feedback on potential revisions to the definition and regulations relevant to the modernization regulations which appear in Title 31 DCMR Chapters 4, 5, 6, 8, 15, 18, 20 and 99.

The public hearing will take place at the following time and location:

FRIDAY, SEPTEMBER 22, 2017 AT 10:00 AM

2235 SHANNON PLACE, S.E.
WASHINGTON, DC 20020
HEARING ROOM, SUITE 2032

DC DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PUBLIC HEARING

Notice is hereby given that, pursuant to the requirements of D.C. Official Code Section 42-3171.03, the District of Columbia Department of Housing and Community Development (DHCD) has scheduled a public hearing on Tuesday October 17, 2017 at 6:00 p.m. at DHCD 1st Floor Conference Room, 1800 Martin Luther King Avenue, SE, Washington, DC 20020, to consider the proposed disposition of the property noted below.

SSL	Property Address	Property Type	Ward	Zoning	Historic District	Neighborhood
5777 0824	1642 -1648 V Street SE	Multifamily	8	R-3	No	Anacostia

The above property was offered as part of an adjacent property Competitive Negotiated Sale. An offer letter was sent to 1650 V Street SE, owned by Mr. Mohammad Sikder on October 13, 2016. The notice sought proposals for the acquisition and development of the subject property. The competitive process resulted in the selection of Mr. Mohammad Sikder who will be awarded the property. The offer was approved by DHCD management and the Public Hearing is scheduled for Tuesday October 17, 2017

The public hearing is being conducted to ensure that citizens are informed about the selling of the property identified above to the named buyer, and to ensure that all citizens have the opportunity to present publicly their views concerning such sale.

If you would like to present oral testimony, you are encouraged to register in advance either by e-mailing Ms. Chantese Rogers, chantese.rogers@dc.gov or by calling 202-478-1355. Please provide your name, address, telephone number, and organization affiliation, if any. Telecommunications Device for the Deaf (TDD) relay service is available by calling (800) 201-7165. A sign language interpreter and language translation services are available upon request by calling Pamela Hillsman at 202-442-7251. If you require language translation, please specify which language (Spanish, Vietnamese, Chinese-Mandarin/Cantonese, Amharic, or French). Language translation services will be provided to pre-registered persons only. Deadline for requiring services of an interpreter is 7 days prior to the hearing. Bilingual staff will provide services on an availability basis to walk-ins without registration.

Written statements may be submitted at the hearing, or until 4:45 p.m., Friday October 20, 2017, and should be addressed to: Polly Donaldson, Director, DC Department of Housing and Community Development, ATTN: PADD, 1800 Martin Luther King Jr., Avenue, SE, Washington, D.C. 20020.

DC DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PUBLIC HEARING

Notice is hereby given that, pursuant to the requirements of D.C. Official Code Section 42-3171.03 (a)(1), the District of Columbia Department of Housing and Community Development (DHCD) has scheduled a public hearing on Thursday, October 26, 2017 at 6 p.m. The hearing will occur in DHCD's 1st Floor Conference Room located at 1800 Martin Luther King Avenue SE, Washington, DC 20020, to consider the proposed disposition of the properties noted below.

SSL	Property Address	Property Type	Ward	Zoning	Historic District	Neighborhood
5176, 0989	4906 Jay Street, NE	SF	7	R-3	No	Deanwood

The above property was offered as part of a Competitive Negotiated Sale. On May 11, 2017, DHCD sent notices to property owners who share a common area with the subject property. The notices sought proposals for the acquisition and development of the subject property. The competitive process resulted in the selection of Ms. Nia Hope who will be awarded the property.

The public hearing is conducted to ensure that all citizens are informed about the selling of the property identified above to the named buyer and have the opportunity to publicly present their views concerning the sale.

If you would like to present oral testimony, you are encouraged to register in advance either by emailing DHCD's Property Acquisition and Disposition Division at padd.sfo@dc.gov, or by calling (202) 478-1355. Please provide your name, address, telephone number, and organizational affiliation, if any.

Telecommunications Device for the Deaf (TDD) relay service is available by calling (800) 201-7165. Sign language interpretation and language translation services are available upon request by calling Pamela Hillsman at (202) 442-7251. If you require language translation, please specify which language (Spanish, Vietnamese, Chinese-Mandarin/Cantonese, Amharic, or French). Language translation services will be provided to pre-registered persons only. The deadline for requiring interpretation services is seven days prior to the hearing. Bilingual staff will provide services as available to unregistered attendees.

Written statements may be submitted at the hearing, or until 4:45 p.m., Friday, October 27, 2017, and should be addressed to: Polly Donaldson, Director, DC Department of Housing and Community Development, ATTN: PADD, 1800 Martin Luther King Jr., Avenue SE, Washington, DC 20020.

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, NOVEMBER 1, 2017
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

19589 ANC 6C — **Application of Thad Hunkins**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and the rear yard requirements of Subtitle E § 205.4, and under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502 to construct a one-story rear addition and roof deck to an existing one-family dwelling in the RF-1 Zone at premises 643 F Street N.E. (Square 861, Lot 188).

WARD SIX

19593 ANC 6A — **Application of Edward and Naomi Griffin**, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the nonconforming structure requirements of Subtitle C § 202.2, to enclose a rear, third floor deck in an existing one-family dwelling in the RF-1 Zone at premises 1226 North Carolina Avenue N.E. (Square 1012, Lot 122).

WARD FOUR

19605 ANC 4C — **Application of 1331 Taylor St., LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the residential conversion regulations of Subtitle U § 320.2, to convert a one-family dwelling into a three-unit apartment house in the RF-1 Zone at premises 1331 Taylor Street N.W. (Square 2822, Lot 15).

WARD THREE

19606 ANC 3C — **Application of St. Albans School**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use regulations of Subtitle U § 203.1(l), to permit an increase to the maximum permitted number of students, faculty and staff of an existing private school in the R-1-B Zone at premises 3101 Wisconsin Avenue N.W. (Square 1944, Lot 25).

WARD FIVE

19607 ANC 5E — **Application of Great American Bistro, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the non-conforming use requirements of Subtitle C § 204.3, to operate a new full-service restaurant in the RF-1 zone at premises 1545 New Jersey Avenue N.W. (Square 510E, Lot 800).

WARD FOUR

19611 ANC 4C — **Application of 909 Webster Street Partners, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 320.2, to convert an existing residential building to a three-unit apartment house in the RF-1 Zone at premises 909 Webster Street N.W. (Square 3020, Lot 22).

WARD ONE

19614 ANC 1D — **Application of B Monroe Ventures, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the side yard requirements of Subtitle E § 307.3, to construct a new three-story flat in the RF-1 zone at premises 1844 Monroe Street N.W. (Square 2614, Lot 38).

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 Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 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.

**Note that party status is not permitted in Foreign Missions cases.*

Do you need assistance to participate?

Amharic
ለመሳተፍ ዕርዳታ ያስፈልግዎታል?
የተለየ እርዳታ ካስፈለገዎት ወይምየ ቋንቋ እርዳታ አገልግሎቶች (ትርጉምወይምመሸተርጎም) ካስፈለገዎት እባክዎን ከስብሰባውአምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይምበኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነ ኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

Chinese
您需要有人帮助参加活动吗？
如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件 Zelalem.Hill@dc.gov。这些是免费提供的服务。

French
Avez-vous besoin d'assistance pour pouvoir participer ? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

Korean
참여하시는데 도움이 필요하세요?
특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish
¿Necesita ayuda para participar?
Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese
Quí vị có cần trợ giúp gì để tham gia không?
Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

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

FREDERICK L. HILL, CHAIRPERSON
LESYLLEÉ M. WHITE, MEMBER
CARLTON HART, VICE-CHAIRPERSON,
NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
ONE BOARD SEAT VACANT
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CITY ADMINISTRATOR
CONCEALED PISTOL LICENSING REVIEW BOARD

NOTICE OF DECISION TO ISSUE GUIDANCE DOCUMENT

BOARD'S INTERPRETATION OF 1 DCMR § 1200.5
(Administrative Disposition of Certain Appeals and Unopposed Requests for Continuances Without Convening a Panel)

On June 29, 2017 a quorum of the Concealed Pistol Licensing Review Board ("Board") met at an open meeting to discuss, among other matters, the interpretation of 1 DCMR § 1200.5 as it relates to the administrative disposition of certain appeals and unopposed motions for continuances without convening a panel.

Section 1200.5 reads as follows:

> The Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

The Board discussed that it had received requests, from the Chief of the Metropolitan Police Department ("Chief'), to stay appeals of denials of applications for concealed pistol licenses. Subsequently, the Chief granted these same applications. Such appeals remained open at the Board pending a meeting of the assigned Panels to determine dispositions of the cases.

By a unanimous vote of the board members present, the Board decided to interpret 1 DCMR § 1200.5 to allow the Presiding Member of the Panel or Chairperson of the Board to administratively dismiss an appeal where the Chief submits evidence that he or she has granted the application for a concealed pistol license that is the subject of the appeal. In such cases, the Panel assigned to the case need not be convened for a meeting. The absence of a meeting of the Panel will not prejudice the parties as the Chief is granting the license in the case and the appeal therefore is moot.

The Board also discussed that it has received unopposed motions for continuances in appeals. Such motions remained open at the Board pending a meeting of the assigned Panels to determine dispositions of the cases.

By a unanimous vote of the board members present, the Board decided to interpret 1 DCMR § 1200.5 to allow the Presiding Member of the Panel or Chairperson of the Board to administratively grant unopposed motions for continuances. In such cases, the Panel assigned to the case need not be convened for a meeting. The absence of such a meeting of the Panel will not prejudice the parties as the parties previously have agreed to the continuance.

THERFORE, pursuant to the authorization by the Board, Alicia Washington, Chairperson, authorized the posting of this guidance document on the Board's website and the submission of this guidance document to the Office of Documents and Administrative Issuances for publication in the *DC Register*.

D.C. DEPARTMENT OF HUMAN RESOURCES

NOTICE OF FINAL RULEMAKING

The Director of the D.C. Department of Human Resources, with the concurrence of the City Administrator, under the authority of Sections 404(a) and 1201 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 §§ 1-604.04(a) and 1-612.01 *et seq*. (2016 Repl.)), and Mayor's Order 2008-92, dated June 26, 2008,hereby gives notice of the intent to adopt the following rulemaking that amends Chapter 12 (Hours of Work, Legal Holidays, and Leave) of Title 6 (Personnel), Subtitle B (Government Personnel), of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rulemaking notice is to: (1) clarify that employees with service credits under federal retirement programs other than the Civil Service Retirement System are not eligible to receive creditable service for annual leave accrual purposes; (2) re-designate Section 1236, Emergency Annual Leave and Leave Restriction for Abuse of Emergency Annual Leave, as [RESERVED] (3) move provisions previously contained in Section 1244, Sick Leave—Advancing, to Section 1243; (4) merge the provisions previously contained in Sections 1236 and 1243, Emergency Sick Leave and Leave Restriction for Abuse of Sick Leave into Section 1244, rename Section 1244 as Unscheduled Leave and Leave Restriction, and further amend Section 1244 to provide clarifying language on the use of annual leave, sick leave, and leave without pay during personal emergencies; (5) amend Section 1279 for clarity and change the number of days a WAE employee must be continuously employed to ninety (90) days; (6) add clarifying language to Subsection 1286; and (7) amend the definition of "Unscheduled Leave" in Section 1299, Definitions.

No comments were received during the notice period for the Notice of Proposed Rulemaking published in the *D.C. Register* on October 21, 2016, at 63 DCR 013147. A non-substantive change was made in Subsection 1244.10 to remove a reference to a paragraph of Chapter 16. The final rules will be effective upon publication of this notice in the *D.C. Register*; however, the personnel authority (or Director of DCHR) shall notify agencies when the applicable PeopleSoft time reporting codes notated in Subsection 1244.5 are implemented.

Chapter 12, HOURS OF WORK, LEGAL HOLIDAYS, AND LEAVE, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended as follows:

Section 1211, TELEWORK, Subsection 1211.2, is amended to read as follows:

1211.2 Based on the needs of the organization, and to the extent possible without diminishing employee performance, each agency is authorized to establish telework for eligible employees of the agency, except as provided in Subsection 1211.12.

Section 1233, ANNUAL LEAVE—DETERMINING CREDITABLE SERVICE, is amended to read as follows:

1233.1 In determining years of creditable service for annual leave accrual, an employee shall be entitled to receive service credit for the following:

(a) All service creditable under CSRS (5 U.S.C. § 8332) for the purpose of an annuity;

(b) Except for employees as described in Subsections 1232.6 and 1232.7, all service creditable under the District retirement benefits program established pursuant to Section 2605 of the CMPA (D.C. Official Code § 1-626.05 (2012 Repl.)); and

(c) Military service for uniformed service members retired as a result of a service related disability, as provided in Subsection 1233.2.

1233.2 An employee who is a retired member of a uniformed service as defined by 5 U.S.C. § 3501 shall be entitled to credit for active military service only if his or her retirement was based on one (1) of the two (2) following types of disabilities:

(a) A disability resulting from injury or disease received in the line of duty as a direct result of armed conflict; or

(b) A disability caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by 38 U.S.C. §§ 101 and 301.

1233.3 The determination of years of service may be made on the basis of an affidavit from the employee subject to verification by the personnel authority.

1233.4 District government service prior to October 1, 1987, that is under Social Security shall be creditable for annual leave accrual purposes, and shall be purchasable for credit toward retirement under 5 U.S.C. § 8332.

1233.5 Notwithstanding any other provision of this chapter, CSRS annuitants who are employed or re-employed by the District government after February 26, 2008, shall not receive service credit for any federal or District service that was used to compute their CSRS annuity.

1233.6 Except for the service described in Subsection 1233.1, federal government service shall not be creditable service for annual leave accrual purposes.

Section 1235, ANNUAL LEAVE—GRANTING, Subsection 1235.2, is amended to read as follows:

1235.2 Annual leave shall be requested and approved no later than twenty-four (24) hours

prior to the day on which the annual leave is to be used. Employees are required to obtain approval for the use of annual leave by whichever method is formally established within his or her agency. Annual leave requested and approved at least 24 hours prior to the leave period shall constitute "scheduled annual leave;" leave approved with less than 24 hours' notice is deemed "unscheduled annual leave" for recordkeeping purposes.

Section 1236, EMERGENCY ANNUAL LEAVE AND LEAVE RESTRICTION FOR ABUSE OF EMERGENCY ANNUAL LEAVE, is repealed and replaced with:

1236 [RESERVED]

Section 1243, EMERGENCY SICK LEAVE AND LEAVE RESTRICTION FOR ABUSE OF SICK LEAVE, is repealed and replaced with:

1243 SICK LEAVE–ADVANCING

1243.1 Agency heads or their subordinate supervisor designees are authorized to advance to an employee a maximum of two hundred forty (240) hours of sick leave in cases of serious disability or ailments, except:

(a) When the agency head (or designee) has reason to believe that the employee may not be able to repay the advanced leave; or

(b) When an employee is serving a term or temporary appointment with a not-to-exceed date), an agency head may advance sick leave only up to the total sick leave the employee would earn during the remainder of the time-limited appointment.

1243.2 If the reason for an employee's request for advanced sick leave would qualify for leave under D.C. FMLA or federal FMLA, any advanced sick leave used by the employee shall count towards his or her entitlement.

1243.3 All of the employee's accrued and accumulated sick leave must be exhausted before an agency head or his or her designee may advance leave to the employee.

Section 1244 is renamed from "SICK LEAVE—ADVANCING" to "UNSCHEDULED LEAVE AND LEAVE RESTRICTION," and is amended to read as follows:

1244 UNSCHEDULED LEAVE AND LEAVE RESTRICTION

1244.1 The required process for requesting leave is to submit a request at least twenty-four (24) hours prior to the day the leave is to be taken (agencies may establish policies requiring that a leave request be submitted more than twenty-four (24) hours in advance); however, from time to time, employees may need to be absent from work unexpectedly for reasons such as a personal emergency or illness. Any

leave not requested at least twenty-four (24) hours in advance of the start of an employee's scheduled tour of duty is considered unscheduled leave.

1244.2 Employees are entitled to unscheduled leave when circumstances beyond their control prevent them from reporting to work. An employee may also use unscheduled leave when authorized by the Mayor during a declared emergency as outlined in Subsection 1273.4. Except when an employee is placed on leave restriction, or when there is a uniform agency policy to the contrary, the use of unscheduled sick leave does not require supervisory approval. Notwithstanding the foregoing, a supervisor may deny the use of unscheduled leave if the supervisor has sound reason to believe that a legitimate personal emergency does not exist or the employee's presence on duty is essential to maintain minimum public services in the support or maintenance of public health, life, or property and the employee has been so notified.

1244.3 An employee shall inform his or her immediate supervisor or, if not available, another supervisor within the employee's chain of command, of his or her need to take unscheduled leave. Except in exceptional circumstances, an employee shall notify his or her supervisor of the need to take unscheduled leave no later than two (2) hours prior to the beginning of the employee's scheduled tour of duty or as soon as the employee becomes aware of the need to take unscheduled leave, whichever is earlier. A request for unscheduled leave received after the start of the employee's tour of duty may be denied. Agencies may establish a written policy with a different notification period based on operational requirements.

1244.4 Agency heads shall determine, and inform their subordinate employees in writing, whether notifying a co-worker, leaving a message on the supervisor's or an approved agency voicemail, sending an electronic mail, or submitting a leave request for unscheduled leave in the time reporting system shall be deemed as an adequate contact for employees notifying their supervisor of their need to take unscheduled leave. If no administrative order or agency policy is developed in this regard, then employees shall submit a leave request for unscheduled leave in the time reporting system.

1244.5 The use of unscheduled leave shall be reported as "unscheduled annual leave," "unscheduled sick leave," "unscheduled leave without pay," "unscheduled compensatory time," or "unscheduled exempt time off" in the applicable time reporting system based upon the reason for the absence. When appropriate, employees on an approved telework agreement should consider requesting situational telework, as outlined in Subsection 1211.8, in lieu of using unscheduled leave.

1244.6 As required by Subsection 1242.5, sick leave for pre-scheduled medical, dental, or optical examinations or treatments shall be requested in advance. In all other situations, the employee shall make requests for unscheduled sick leave pursuant to Subsection 1244.3.

1244.7 An employee's immediate supervisor may restrict an employee's use of unscheduled leave whenever there is substantial evidence that the employee has engaged in a pattern or practice of leave abuse, such as:

(a) Requesting unscheduled leave in order to avoid certain work shifts or work assignments;

(b) Requesting unscheduled leave when a personal emergency does not exist;

(c) Requesting unscheduled leave with such frequency that it results in the employee being unavailable immediately preceding or following the employee's consecutive two (2) days outside of the basic workweek; or

(d) Requesting unscheduled leave with such frequency that it results in the employee being absent part of the workday or an entire workday on a consistent and regular basis.

1244.8 Whenever a supervisor determines that an employee has engaged in an activity set forth in Subsection 1244.7, the employee may be placed on leave restriction. The period of leave restriction shall be outlined in writing and may not exceed ninety (90) days.

1244.9 An employee who has been placed on leave restriction must receive permission directly from his or her supervisor or, if not available, directly from another supervisor in the chain of command, before taking unscheduled leave.

1244.10 An employee under leave restriction who takes unscheduled leave without receiving prior supervisory approval, as specified in Subsection 1244.9, shall be placed in an Absence Without Official Leave status in accordance with section 1268; may be ordered to provide proof that he or she was seen by a health care provider; and shall be subject to administrative action as indicated in Chapter 16 (Corrective and Adverse Actions; Enforced Leave; and Grievances).

1244.11 Upon completion of a prescribed period of leave restriction without incident, the employee shall be removed from leave restriction and may return to requesting unscheduled leave as indicated in Subsection 1244.4.

Section 1246, FLSA COMPENSATORY TIME—GRANTING, Subsection 1246.1, is amended to read as follows:

1246.1 An employee may be authorized to use, at the employee's request, compensatory time in lieu of using annual leave, sick leave, leave without pay, or unscheduled leave.

Section 1248, EXEMPT TIME OFF, Subsection 1248.2, is amended to read as follows:

1248.2 An employee may be authorized to use, at the employee's request, exempt time off in lieu of using annual leave, sick leave, leave without pay, or unscheduled leave.

Section 1262, MILITARY LEAVE, Subsection 1262.6, is amended to read as follows:

1262.6 An employee serving in a permanent appointment, temporary appointment pending establishment of a register (TAPER), term appointment, or indefinite appointment, who is a member of the D.C. National Guard, shall be entitled to military leave without loss in pay or time for participation in parades or encampments that the D.C. National Guard, or any portion thereof, is ordered to perform by the Commanding General under Title 49 of the D.C. Official Code. However, leave will not be provided for time spent at weekly drills or meetings and does not extend to voluntary participation in such operations. When leave is taken pursuant to this subsection, the employee shall be entitled to pay differential between their regular rate of pay and that received from the National Guard.

Section 1273, DECLARED EMERGENCIES—LATE ARRIVAL, UNSCHEDULED LEAVE, OR UNSCHEDULED TELEWORK, Subsection 1273.4, is amended to read as follows:

1273.4 Whenever the Mayor determines that an unscheduled leave policy is in effect due to a declared emergency in accordance with Subsection 1273.1(b), an employee, other than an essential or emergency employee subject to the provisions of Section 1271, shall be permitted to utilize annual leave, compensatory time, exempt time off, or leave without pay, for all or part of that day, up to a maximum of eight (8) hours or the number of hours worked under an alternative or compressed work schedule, if applicable, without obtaining advance approval or providing detailed justification. The use of unscheduled sick leave must be approved in accordance with Section 1244.

Section 1279, PAID LEAVE PURSUANT TO THE ACCRUED SICK AND SAFE LEAVE ACT OF 2008 (D.C. LAW 17-152), AS AMENDED, is amended to read as follows:

1279 ACCRUED SICK AND SAFE LEAVE

1279.1 The Accrued Sick and Safe Leave Act of 2008 ("Act"), effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code §§ 32-131.01, *et seq*. (2012 Repl. & 2016 Supp.)), provides paid leave to covered employees for illness and for absences associated with domestic violence and sexual abuse.

1279.2 The provisions of this section shall only apply to "covered employees." For the purposes of this section, a "covered employee" is a temporary employee who has been continuously employed under a "When Actually Employed" (WAE) (also

known as intermittent) appointment for at least ninety (90) days. The District government has paid leave policies, as specified in this chapter, which provide leave options at higher accrual rates than those provided in this section. Employees in non-WAE positions are covered by those leave options, rather than by this section.

1279.3 An employee's paid leave under this section shall accrue in accordance with the District government's established biweekly pay period, and at the beginning of his or her employment. Covered employees are provided with not less than one (1) hour of paid leave for every thirty seven (37) hours worked, not to exceed seven (7) days a year.

1279.4 Covered employees shall accrue paid leave on a prorated basis at a rate of (1) hour of paid leave per biweekly pay period. An employee may begin to access the accrued paid leave after ninety (90) days of service with the District government.

1279.5 Paid leave accrued under this section may be used by a covered employee for any of the following:

(a) An absence resulting from a physical or mental illness, injury, or medical condition of the employee;

(b) An absence resulting from obtaining a professional medical diagnosis or care, or preventive medical care, for the employee;

(c) An absence for the purpose of caring for a family member who has any of the conditions or needs for diagnosis or care described in paragraphs (a) and (b) of this subsection; or

(d) An absence if the employee or the employee's family member is a victim of stalking, domestic violence, or sexual abuse; provided, the employee seeking leave under paragraph (d) of this subsection, may:

(1) Seek medical attention for the employee or the employee's family member to treat or recover from physical or psychological injury or disability caused by an incident of stalking, domestic violence, or sexual abuse;

(2) Obtain services from a victim services organization;

(3) Obtain psychological or other counseling services;

(4) Temporarily or permanently relocate;

(5) Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from an

incident of stalking, domestic violence, or sexual abuse; or

(6) Take other actions to enhance the physical, psychological, or economic health or safety of the employee or the employee's family member or to enhance the safety of those who associate or work with the employee.

1279.6 Unused paid leave accrued by a covered employee who separates from employment and is rehired within one (1) year of separation shall be reinstated. The employee shall be entitled to use the accrued paid leave and accrue additional paid leave immediately upon re-employment provided that the employee had previously been eligible to use paid leave.

1279.7 Unused paid leave accrued by an employee subject to this section who separates from employment for more than one (1) year, shall not be reinstated, and the employee shall be considered as being on a new appointment for purposes of leave accrual and access as provided in Subsections 1279.3 and 1279.4.

1279.8 The use of paid leave by a covered employee in accordance with this section shall not subject the employee to discipline, termination, demotion, suspension or other corrective or adverse action.

1279.9 If the Mayor (or his or her designee) determines that a District agency under the Mayor's personnel authority has violated any provisions of this section, the Mayor (or his or her designee) shall order affirmative remedies in accordance with provisions contained in the Act.

1279.10 The District government shall retain records documenting the hours worked and the paid leave taken by an employee subject to the provisions of this section for a period of three (3) years. The District government shall allow access to the retained records by the Mayor and the D.C. Auditor, with appropriate notice.

1279.11 For the purposes of this section, the following terms shall have the meanings ascribed:

Domestic violence – an intrafamily offense as defined in D.C. Official Code § 16-1001(8).

Employee – any individual employed by the District government.

Family member – (a) a spouse, including the person identified by an employee as his or her domestic partner, as defined in Section 2(3) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(3) (2012 Repl.)); (b) the parents of a spouse; (c) children (including foster children and grandchildren); (d) the spouses of children; (e) parents; (f) brothers and sisters; (g) the spouses of brothers and sisters; (h) a child who lives with an employee and for whom

the employee permanently assumes and discharges parental responsibility; or (i) a person with whom the employee shares or has shared, for not less than the preceding twelve (12) months, a mutual residence and with whom the employee maintains a committed relationship, as defined in Section 2(1) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(1)).

Paid leave – accrued increments of compensated leave provided by the District for use by an employee.

Sexual abuse – any offense described in the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code §§ 22-3001 *et seq*. (2012 Repl. & 2016 Supp.)).

Section 1286, GOVERNMENT FAMILY LEAVE PROGRAM – PROTECTIONS AND LIMITATIONS, Subsection 1286.8, is amended to read as follows:

1286.8 An employee on paid family leave must provide care to the child or family member for whom the leave was approved on each day for which paid family leave is used. An employee shall not receive paid family leave when the qualifying child or family member is entrusted to the care of another individual (such as an aunt, uncle, sibling, etc.), other than a medical professional, for four (4) or more hours during the employee's typical tour of duty.

Section 1299, DEFINITIONS, Subsection 1299.1, is amended to add and revise definitions for the following terms:

Personal emergency – an urgent circumstance, outside of the employee's control, which prevents an employee from reporting to work. A personal emergency may include, but is not limited to, a personal illness, illness of an immediate family member, and a household emergency. In this context, personal emergencies are temporary in nature. Should an employee require extended time away from work, he or she should consult with his or her agency to receive information on the potential eligibility for federal FMLA or D.C. FMLA.

Telework – an arrangement in which an employee regularly, or during a declared emergency, performs officially assigned duties at his or her home, and which is approved, in advance and in writing, by the employee's immediate supervisor and agency head.

Unscheduled leave – any leave approved (granted) by an employee's immediate supervisor when the request for such leave occurred less than twenty-four (24) hours before the leave period is scheduled to begin.

DEPARTMENT OF EMPLOYMENT SERVICES

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Apprenticeship Council, with the approval of the Director of the Department of Employment Services, pursuant to the authority set forth in Section 4 of An Act to provide for voluntary apprenticeship in the District of Columbia ("Apprenticeship Act"), approved May 21, 1946 (60 Stat. 205; D.C. Official Code § 32-1404 (2012 Repl. & 2016 Supp.)), hereby gives notice of its intent to amend Chapter 11 (Apprenticeships) of Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking is necessary to conform with Title 29 CFR parts 29 and 30. The purpose of the Apprenticeship Act is to set forth labor standards necessary to safeguard the welfare of apprentices and establish policies and procedures relative to the registration of apprenticeship programs and agreements and the resolution of disputes.

The District of Columbia Apprenticeship Council, with the approval of the Director of the Department of Employment Services, also gives notice of the intent to adopt these rules as final, in not less than thirty (30) days after publication of this notice in the *D.C. Register.*

Chapter 11, APPRENTICESHIPS, of Title 7 DCMR, EMPLOYMENT BENEFITS, is amended to read as follows:

CHAPTER 11 APPRENTICESHIPS

1100 PURPOSE AND SCOPE
1101 MANDATORY REGISTRATION OF APPRENTICESHIP PROGRAMS
1102 MANDATORY REGISTRATION OF APPRENTICESHIP PROGRAMS
1103 CRITERIA FOR APPRENTICEABLE OCCUPATIONS
1104 APPRENTICESHIP STANDARDS NECESSARY FOR CONSIDERATION AND APPROVAL BY THE D.C. STATE APPRENTICESHIP AGENCY
1105 PROGRAM PERFORMANCE STANDARDS
1106 DEREGISTRATION OF APPRENTICESHIP PROGRAMS
1107 REINSTATEMENT OF APPRENTICESHIP PROGRAMS
1108 REGISTRATION OF INDIVIDUAL APPRENTICESHIP AGREEMENTS REQUIRED
1109 INDIVIDUAL APPRENTICESHIP AGREEMENTS FOR REGISTERING APPRENTICES
1110 COMPLAINTS UNDER INDIVIDUAL APPRENTICESHIP AGREEMENTS
1111 LIMITATIONS
1199 DEFINITIONS

1100 PURPOSE AND SCOPE

1100.1 The purpose of these rules is to set forth labor standards necessary to safeguard the welfare of apprentices and establish, policies and procedures relative to the registration and deregistration of apprenticeship programs, the registration of apprenticeship agreements and the resolution of disputes thereunder by the Registration Agency and the Director.

1100.2 The authority for the adoption of these standards, policies, and procedures affecting the apprenticeship programs and agreements is section 4 of An Act to provide for voluntary apprenticeship in the District of Columbia (Apprenticeship Act), approved May 21, 1946 (60 Stat. 205; D.C. Official Code § 32-1404 (2012 Repl. & 2016 Supp.)).

1101 MANDATORY REGISTRATION OF APPRENTICESHIP PROGRAMS

1101.1 All prime contractors, subcontractors and tier subcontractors, who contract with the District of Columbia government to perform construction, renovation work or information technology work with a single contract, or cumulative contracts, of at least five hundred thousand dollars ($500,000), let within a twelve (12) month period, shall be required to register an apprenticeship program with the D.C. State Apprenticeship Agency. Thirty-five percent (35%) of all apprenticeship hours performed on any D.C. government assisted project shall be performed by District of Columbia residents. Sixty percent (60%) of all apprenticeship hours shall be performed by District residents on any D.C. government assisted construction project that is five million dollars ($5,000,000.00) or more. These requirements shall apply to construction projects that receive funds or resources from the District of Columbia, or funds or resources which, in accordance with a federal grant or otherwise, the District of Columbia government administers, including contracts, grants, loans, tax abatements or exemptions, land transfers, land disposition and development agreements, tax increment financing, or any combination thereof.

1101.2 No person or organization shall apply to register an individual apprenticeship agreement with the Director, unless such person or organization has registered an apprenticeship program with the Registration Agency before applying to register the agreement.

1102 ELIGIBILITY AND PROCEDURE FOR REGISTRATION OF AN APPRENTICESHIP PROGRAM

1102.1 Any person or organization seeking to register an apprenticeship program shall submit all required documents to the Registration Agency for consideration, and approval. Eligibility for registration of the program for District of Columbia purposes and recognition by the United States Secretary of Labor for federal purposes is conditioned upon the program's conformity with the apprenticeship

program standards published in this Chapter and the District of Columbia State Plan for Equal Opportunity adopted pursuant to 29 CFR Part 30.

1102.2 Each application shall provide the following information:

(a) The company's existing workforce;

(b) That the training is in an apprenticeable occupation having the characteristics set forth in Section 1104;

(c) An organized plan for meeting each of the program standards required by Section 1105;

(d) A copy of the apprenticeship agreement required by Section 1109; and,

(e) The applicant's commitment to operate the apprenticeship program as registered by the Registration Agency.

1102.3 Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgement of union agreement or no objection to the registration is required.

1102.4 If no such union participation is provided for, the application shall include evidence that the applicant has by certified mail furnished to any union local that is recognized as the collective bargaining agent for employees in those positions for which apprentices are to be trained, a complete copy of the application for registration together with a notice that the Registration Agency will accept union comments for forty-five (45) calendar days after the date of the application before final action is taken.

1102.5 If employees in the positions for which apprentices are to be trained have no collective bargaining agent the application shall so state. An apprenticeship program may be proposed for registration by an employer or group of employers or an employer association.

1102.6 The Registration Agency shall conduct a worksite analysis before registering any apprenticeship program and the results of such analysis shall be reported to the Registration Agency prior to any decision to approve a plan. The analysis shall identify any prior or existing state or federal violations that affect workers.

1102.7 The Registration Agency shall register an apprenticeship program if the application for registration meets the requirements of this chapter. The

registration of a program by the Registration Agency shall be evidenced by a certificate of registration or by other written indicia.

1102.8 All new registered apprenticeship programs shall be under provisional approval for a period of one (1) year. A quality assessment review of the program shall be conducted by the Registration Agency after the one year period to determine conformity with the requirements of this chapter. At that time, the registration approval of the program in conformity with this chapter may be made permanent or continue to be provisionally approved through the first full training cycle. A program not in operation or not conforming to the regulations during the provisional approval period will be recommended for deregistration procedures.

1102.9 The Registration Agency will review all programs for quality and for conformity with this chapter at the end of the first full training cycle. A satisfactory review of a provisionally approved program will result in conversion of provisional approval to permanent registration. Subsequent reviews will be conducted no less frequently than every five years. A program not in operation or not conforming to the regulations will be recommended for deregistration procedures.

1102.10 Each registration shall state that the apprenticeship program for any occupation is subject to deregistration by the Registration Agency if, as certified by the Director, no active on-the-job learning of apprentices has occurred within a period of one (1) year from the date of the last such active training.

1103 CRITERIA FOR APPRENTICEABLE OCCUPATIONS

1103.1 An apprenticeable occupation is one which must:

(a) Involve skills that are customarily learned in a practical way through a structured, systematic program of on-the-job learning;

(b) Be clearly identified and commonly recognized throughout an industry;

(c) Involve the progressive attainment of manual, mechanical or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of at least two thousand (2,000) hours of on-the-job learning to attain; and

(d) Require related instruction to supplement the on-the-job learning.

1104 APPRENTICESHIP STANDARDS NECESSARY FOR CONSIDERATION AND APPROVAL BY THE D.C. STATE APPRENTICESHIP AGENCY

1104.1 The apprenticeship program standards must be in the form of an organized and written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in an apprenticeable occupation and

subscribed to by a sponsor who has undertaken to carry out the apprentice training program. Training shall be offered in one or more skilled occupations that are approved as apprenticeable, as defined by these rules.

1104.2 The term of apprenticeship shall be not less than two thousand (2,000) hours per year of on-the-job learning (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and competency-based approaches (hybrid approach) consistent with training requirements as established by industry practice.

1104.3 The term of apprenticeship training approved for competency based and hybrid programs shall include on-the-job learning along with other required measured skill acquisitions that must be acquired by the apprentices. The on-the-job learning and measured skills acquisitions shall consist of:

(a) The time-based approach measured skills acquired through the individual apprentice's completion of at least 2,000 hours of on-the-job learning as described in a work process schedule;

(b) The competency-based approach measured skills acquired through the individual apprentice's successful demonstration of acquired skills and knowledge as verified by the program sponsor. Programs utilizing this approach must still require apprentices to complete an on-the-job learning component of Registered Apprenticeship. Sponsors must address in the program standards how on-the-job-learning will be integrated into the program, describe all competencies and identify appropriate means of testing and evaluation for the competencies; or

(c) The hybrid approach measured by the individual apprentice's skill acquisition through a combination of a specific minimum number of hours of on-the-job learning and the successful demonstration of competency as described in the work process schedule.

1104.4 The determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the Registration Agency of the determination as appropriate to the apprenticeable occupation for which the program standards are registered.

1104.5 Each apprenticeship program shall set forth in writing: a statement that the program will be conducted in compliance with the District of Columbia State Plan for Equal Employment Opportunity in Apprenticeship Training, adopted pursuant to 29 CFR Part 30; an equal opportunity pledge; and, when applicable, an affirmative action plan and selection method.

1104.6 Each apprenticeship program shall describe the work processes in which apprentices will receive supervised work experience and learning on-the-job and the allocation of the approximate time to be spent in each major learning process.

1104.7 Each apprenticeship program shall provide organized, related, and supplemental instruction in technical subjects related to the occupation, for which the sponsor shall bear the cost of tuition, books, and materials. A minimum of one hundred forty-four (144) hours for each year of apprenticeship is recommended. This instruction in technical subjects may be accomplished through media such as classroom, occupational or industry courses, electronic media, or other instruction approved by the Registration Agency.

1104.8 An apprenticeship program may use electronic media as a tool in the delivery of related instruction where necessary to support industry styles, which must be approved by the D.C. Registration Agency. An instructor for apprenticeship related instruction shall:

(a) Meet the requirement(s) for a vocational-technical instructor under the District of Columbia State Education Office or any accredited education institution, or be a subject matter expert, which is an individual, such as a journeyworker, who is recognized within an industry as having expertise in a specific occupation, and

(b) Have training in teaching techniques and adult learning styles which may occur before or after the apprenticeship instructor has started to provide related instruction.

1104.9 Each apprenticeship program shall contain a progressively increasing schedule of wages to be paid to the apprentice consistent with the skill acquired, to include an entry wage not less than the minimum wage prescribed by the District of Columbia minimum wage law, appropriate wage order, or by the Fair Labor Standards Act, where applicable, unless a higher wage is required by other applicable Federal or state laws, respective regulations, or by collective bargaining agreement.

1104.10 A minimum hourly apprentice wage rate paid during the last period of apprenticeship shall be:

(a) Not less than ninety (90%) percent of the established journeyworker's wage rate, or

(b) A rate not less than $20.00 per hour.

1104.11 The apprenticeship program shall provide for periodic reviews and evaluations of the apprentice's progress in job performance and related instruction and the maintenance of appropriate progress records.

1104.12 Each apprenticeship program shall identify a numeric ratio of apprentices to journeyworkers for the entire workforce. Such ratio shall be consistent within the given occupation and shall be consistent with proper supervision, training, safety, and continuity of employment as determined by the Registration Agency or applicable provisions in collective bargaining agreements, except when such ratios are expressly prohibited by a collective bargaining agreement. The ratio language must be specific and clearly described as to its application to the job site, workforce, department or plant.

1104.13 The minimum numerical ratio required shall be one (1) apprentice to one (1) journeyworker employed in the occupation area(s) for any service and retail industry. For residential, commercial and industrial construction (new and renovation work) industry, the minimum numerical ratio required shall be one (1) apprentice to every three (3) journeyworkers employed on any job site. However, the first apprentice may be employed when one (1) journeyworker is employed. Apprentices shall be utilized on all District government assisted projects subject to D.C. Official Code § 2-219.03 during the project period utilizing the required numerical ratio.

1104.14 Each apprenticeship program shall provide a probationary period not to exceed twenty percent (20%) of the length of the program term or one (1) year, whichever is shorter, with full credit for such period counting towards completion of the full apprenticeship term. During the probationary period either party may cancel the apprenticeship agreement without stated cause and such cancellation will not have an adverse affect on the sponsor's completion rate.

1104.15 The sponsor shall provide adequate and safe equipment and facilities for on-the-job learning, adequate supervision to promote safe working conditions, and safety training for apprentices both on-the-job and in related instruction.

1104.16 Each apprenticeship program shall state minimum qualifications for persons entering an apprenticeship program with an eligible starting age not less than 16 years.

1104.17 Each apprenticeship program shall provide for the placement of each apprentice under a registered apprenticeship agreement that meets the requirements of Section 1110 of this chapter and is approved by the Registration Agency. The agreement must directly or by reference incorporate the standards of the program as part of the agreement. The names of persons in probationary employment as an apprentice under an apprenticeship program registered by the Office of Apprenticeship or a recognized State Apprenticeship Agency, if not individually registered under such program, must be submitted within forty-five (45) days of employment to the Office of Apprenticeship or State Apprenticeship Agency for certification to establish the apprentice as eligible for such probationary employment.

1104.18 Each apprenticeship program shall provide that advanced credit or standing of up to one-fourth (1/4) of the apprenticeship term shall be granted to all applicants equally, for demonstrated competency, acquired experience, training or skills with commensurate wages paid according to the advanced standing granted.

1104.19 Each apprenticeship program shall require advance approval by the Director of any award of advanced standing or credit greater than twenty-five percent (25%) or one forth (1/4) of the prescribed term of apprenticeship training.

1104.20 Each apprenticeship program shall allow for transfer of apprentices between apprenticeship programs and within an apprenticeship program and must be based on agreement between the apprentice and the affected apprenticeship committees and program sponsors. Apprentice transfers must occur without adverse impact on the apprentice, the apprenticeship committee or the program sponsor, and comply with the following requirements:

(a) The transferring apprentice must be provided a transcript of related training and on-the-job learning by the committee or program sponsor;

(b) The transfer must be within the same occupation; and

(c) A new apprenticeship agreement must be executed when the transfer occurs between program sponsors.

1104.21 Each apprenticeship program shall require the use of qualified training personnel approved by the Registration Agency and adequate supervision on the job.

1104.22 Each apprenticeship program shall provide recognition of apprentices for successful completion of apprenticeship as evidenced by the appropriate certificate issued by the Registration Agency.

1104.23 Each apprenticeship program shall require the sponsor to promptly submit and obtain the approval of the Registration Agency for any modification or amendment to a registered program and provide for the registration, cancellation and deregistration of the program. The Registration Agency will make a determination on whether to approve such modifications or changes within ninety (90) days from the date of receipt. If approved the modifications or changes will be recorded and acknowledged within ninety (90) days of approval as an amendment to the program. If not approved, the sponsor will be notified of the disapproval and the reasons therefore and provided with the appropriate technical assistance.

1104.24 Each apprenticeship program shall provide for registration of apprenticeship agreements, modifications and amendments, notice to the Registration Agency of completions, transfers, suspensions and cancellations of apprenticeship agreements and a statement of the reasons therefore.

1104.25 Each apprenticeship program shall require not less than two (2) weeks written notice of any proposed adverse action including detailed specifications of the cause with written notice indicating the opportunity for corrective action during the two week period, unless such a requirement is in conflict with a collective bargaining agreement and a lesser requirement is approved by the Registration Agency.

1104.26 Upon the request of the sponsor of any multi-state apprenticeship program in any industry, including the building and construction industry, the Registration Agency shall accord reciprocal approval for federal purposes to apprentices, apprenticeship programs and standards that are registered in other states by the State Registration Agency or Office of Apprenticeship if such reciprocity is requested by the apprenticeship program sponsor. Program sponsors seeking reciprocal approval must meet the wage and hour provisions and the apprentice ratio requirements of the District of Columbia.

1104.27 Program standards that utilize the competency-based or hybrid approach for progression through an apprenticeship and that choose to issue interim credentials shall:

(a) Clearly identify the interim credentials and demonstrate how they link to the components of the apprenticeable occupation;

(b) Establish a process for assessing an individual apprentice's demonstration of competency associated with the particular interim credential; and

(c) Issue interim credentials only for recognized components of an apprenticeable occupation, thereby linking interim credentials specifically to the knowledge, skills and abilities associated with those components of the apprenticeable occupation.

1104.28 Each apprenticeship program shall identify the D.C. Office of Apprenticeship, Information and Training as the Registration Agency and provide contact information (name, address, telephone number, and e-mail if appropriate) for the appropriate individual with authority under the program to receive, process and make disposition of complaints.

1104.29 Each apprenticeship sponsor, except for reciprocal approval request for federal projects, shall maintain a District of Columbia resident agent for the purpose of having records of apprentices maintained and shall make such records available for review. Sponsors seeking on-going recognition request for reciprocal approval may be required to comply with this part.

1104.30 Each apprenticeship program shall provide that the sponsor shall maintain all records, including appropriate progress records, for not less than five (5) years,

and that the sponsor shall make such records available to the Registration Agency upon request.

1105 PROGRAM PERFORMANCE STANDARDS

1105.1 Every registered apprenticeship program must have at least one registered apprentice, except for the following specified periods of time, which may not exceed one (1) year:

(a) Between the date when a program is registered and the date of registration for its first apprentice(s); or,

(b) Between the date that a program graduates an apprentice and the date of registration for the next apprentice(s) in the program.

1105.2 The Registration Agency will evaluate the performance of registered apprenticeship programs with tools and factors that include but are not limited to:

(a) Quality assurance assessments;

(b) Equal Employment Opportunity (EEO) Compliance Reviews; and

(c) Completion rates.

1105.3 Any additional tools and factors used by the Registration Agency in evaluating program performance will adhere to the goals and policies of the Department articulated in this part and in guidance issued by the U.S Department of Labor, Office of Apprenticeship.

1105.4 In order to evaluate completion rates, the Registration Agency will review a program's completion rates in comparison to the national average for completion rates. Based on the review, the Registration Agency will provide technical assistance to programs with completion rates lower than the national average.

1105.5 Cancellation of apprenticeship agreements during the probationary period will not have an adverse impact on a sponsor's completion rate.

1106 DEREGISTRATION OF APPRENTICESHIP PROGRAMS

1106.1 At the sponsor’s request, the Registration Agency may deregister an apprenticeship program by giving written notice to the sponsor indicating that:

(a) The program is cancelled at the sponsor’s request or deregistration by the Registration Agency upon reasonable cause and giving the effective date of such action;

(b) Within fifteen (15) working days of the date of acknowledgement, the sponsor will notify all apprentices of such cancellation and the effective date;

(c) Such cancellation automatically deprives the apprentice of individual registration;

(d) Deregistration of the program removes the apprentice from coverage for federal purposes which require the Secretary of Labor's approval of an apprenticeship program; and

(e) All apprentices are referred to the Registration Agency for information concerning the deregistration and potential transfer to other registered apprenticeship programs.

1106.2 The Registration Agency may begin deregistration proceedings when an apprenticeship program is not conducted, operated, or administered in accordance with the programs' registered provisions or requirements of these rules, including but not limited to:

(a) Failure to provide on-the-job learning;

(b) Failure to provide related instruction;

(c) Failure to pay the apprentice a progressively increasing schedule of wages consistent with the apprentices skills acquired; or

(d) Persistent and significant failure to perform successfully.

1106.3 Deregistration proceedings for violation of equal opportunity requirements will be processed in accordance with the provisions of the District's Equal Employment Opportunity in Apprenticeship Plan.

1106.4 For purposes of this section, persistent and significant failure to perform successfully occurs when a program sponsor consistently fails to register at least one apprentice, shows a pattern of poor quality assessment results over a period of several years, demonstrates an ongoing pattern of very low completion rates over a period of several years, or shows no indication of improvement in the areas identified by the Registration Agency during a review process as requiring corrective action.

1106.5 Where it appears the program is not being operated in accordance with the registered standards or with the requirements of this chapter, the Director of the Registration Agency or the Associate Director designated by the Director, shall notify the sponsor's contact person in writing of a preliminary notice of involuntary deregistration, by registered or certified mail, return receipt requested,

stating the shortcoming(s) and the corrective action required, and stating that the program will be deregistered for cause unless corrective action is taken within thirty (30) days from the date of the notice. The Associate Director may upon written request extend the period for corrective action for up to thirty (30) additional days for good cause and shall assist the sponsor in every reasonable way to achieve conformity.

1106.6 If the required correction is not effected within the allotted time, the Associate Director shall send a final notice of involuntary deregistration to the sponsor by registered or certified mail, return receipt requested, stating:

(a) That the notice is sent under this section;

(b) That the deficiency and the remedial action required were called to the sponsor's attention (enumerating them and the remedial measures requested with the dates of such occasions and letters);

(c) That the sponsor has failed or refused to effect the correction; and

(d) That based upon the stated deficiencies and failure to remedy them, a determination has been made that there is reasonable cause to deregister the program and the program may be deregistered unless, within 15 days of the receipt of this notice, the sponsor requests a hearing with the Registration Agency.

1106.7 If the sponsor does not request a hearing, the Registration Agency will have the authority to make the final decision on the record with respect to deregistration.

1106. 8 If the sponsor requests a hearing, the Registration Agency will transmit a report containing all the data listed in Subsection 1106.2 to the Administrator, U.S. Department of Labor, Office of Apprenticeship and the Administrator will refer the matter to the Office of Administrative Law Judges. An Administrative Law Judge will convene a hearing in accordance with 29 CFR part 29.10 for a decision as required in part 29.10(c).

1106.9 Every order of voluntary or involuntary deregistration must contain a provision that specifies the following:

(a) The sponsor must, within fifteen (15) days of the effective date of the order, notify all registered apprentices of the deregistration of the program;

(b) The effective date thereof; that such cancellation automatically deprives the apprentice of individual registration;

(c) The deregistration removes the apprentice from coverage for Federal purposes which require the Secretary of Labor's approval of an apprenticeship program; and,

(d) All apprentices are referred to the Registration Agency for information about potential transfer to other registered apprenticeship programs.

1106.10 The Registration Agency shall promptly notify all District and Federal authorities of the deregistration of any apprenticeship program and the effective date of the deregistration.

1106.11 Deregistration procedures for apprenticeship programs registered to meet requirements of District government mandatory law and not subject to federal purposes shall be the same as required in Subsections 1106.1 through 1106.5 if the sponsor does not request a hearing.

1106.12 If a sponsor who has registered a program to meet District requirements, but not subject to federal purposes requests a hearing, the Chairperson of the D.C. Apprenticeship Council shall convene the Council, which shall hold a hearing and make a determination on the basis of the preponderance of evidence in the hearing record.

1106.13 At any such hearing, the Apprenticeship Council shall offer the sponsor the opportunity to appear with counsel, present documentary evidence and witnesses, and confront any other documentary evidence or witnesses. The Apprenticeship Council shall record any such hearing and make a copy or transcript of the record available at cost to the sponsor on request.

1106.14 Every order of voluntary or involuntary deregistration issued by the Apprenticeship Council shall provide that the sponsor shall, within fifteen (15) working days of the effective date of the order, notify all registered apprentices of the deregistration of the program, the effective date, and that such action automatically terminates the apprentice's individual registration.

1107 REINSTATEMENT OF APPRENTICESHIP PROGRAMS

1107.1 Any apprenticeship program deregistered under this chapter may be reinstated upon presentation of adequate evidence to the Registration Agency that the apprenticeship program is operating in accordance with this part. Such evidence must be presented to the Registration Agency.

1108 REGISTRATION OF INDIVIDUAL APPRENTICESHIP AGREEMENTS REQUIRED

1108.1 No apprentice shall be employed under a registered apprenticeship program unless an individual apprenticeship agreement for that apprentice has been registered with the Registration Agency.

1108.2 Registration of the individual apprentice may be affected by filing copies of each individual apprenticeship agreement with the Registration Agency or, subject to prior approval, by filing a master copy of such agreement followed by a listing of the name and other required data of each individual when apprenticed.

1108.3 The names of persons in probationary employment as an apprentice under an apprenticeship program registered by the Registration Agency if not registered individually must be submitted within 45 days of employment to the Registration Agency for certification to establish the apprentice as eligible for such probationary employment.

1109 INDIVIDUAL APPRENTICESHIP AGREEMENTS FOR REGISTERING APPRENTICES

1109.1 The Associate Director shall register individual apprenticeship agreements which meet the requirements of this section.

1109.2 Each apprenticeship agreement shall contain the names, addresses, and signatures of the contracting parties, the apprentice, the program sponsor or the employer, and the signature of a parent or guardian if the apprentice is a minor.

1109.3 Each apprenticeship agreement shall state the date of birth and, on a voluntary basis, social security number of the apprentice.

1109.4 Each apprenticeship agreement for registering an apprentice shall provide that the sponsor shall notify the Registration Agency in writing within forty-five (45) days of any transfers, modification, cancellation, suspension, or termination of the agreement, with cause for same, and of completion of the apprenticeship.

1109.5 Each apprenticeship agreement shall state the following:

(a) Occupation in which the apprentice is to be trained;

(b) The beginning date and term (duration) of the apprenticeship;

(c) A schedule of work processes in the occupation in which the apprentice is to be trained and the approximate time to be spent at each process;

(d) The total number of hours to be spent by the apprentice in work on the job; and,

(e) The total number of hours to be spent in related and supplemental instruction.

1109.6 Each apprenticeship agreement shall state the period of probation during which the apprenticeship agreement may be canceled by either party to the agreement upon written request to the registration agency without adverse impact on the sponsor.

1109.7 Each apprenticeship agreement shall provide that after the probationary period the agreement may be cancelled at the request of the apprentice, suspended, or canceled by the sponsor for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action. Written notice shall be provided to the apprentice and to the Registration Agency of the final action taken and of the right of the apprentice to appeal the decision to the Registration Agency.

1109.8 Each apprenticeship agreement shall incorporate by reference the standards of the apprenticeship program as they exist on the date of the agreement and as they may be amended during the period of the agreement. Such evidence must be presented to the Registration Agency.

1109.9 Each apprenticeship agreement shall contain a statement of the graduated sca1e of wages to be paid to the apprentice and whether or not the required related instruction is compensated.

1109.10 Each apprenticeship agreement shall provide that the apprentice shall be accorded equal opportunity in all phases of apprenticeship employment and training without discrimination because of race, color, religion, national origin, or sex, and notice of a right to appeal under provisions of the District of Columbia State Plan for Equal Opportunity in Apprenticeship Training, adopted pursuant to 29 CFR Part 30.

1109.11 Each apprenticeship agreement shall state that if a sponsor is unable to fulfill the obligation to the apprentice, the agreement may, with consent of the apprentice and the joint committee if one exists or of the Associate Director if there is no joint committee, be transferred to another sponsor under a registered program and with full credit to the apprentice for satisfactory time and training earned.

1109.12 Each apprenticeship agreement shall provide the contact information (name, address, phone and e-mail if appropriate) of the Registration Agency which will receive, process and make disposition of all controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted by conference between the apprentice and the sponsor or resolved in

accordance with the established procedure or applicable collective bargaining agreement.

1110 COMPLAINTS UNDER INDIVIDUAL APPRENTICESHIP AGREEMENTS

1110.1 This section is not applicable to any complaint concerning discrimination or other equal opportunity matters. All such complaints must be submitted, processed and resolved in accordance with applicable provisions in 29 CFR part 30, or applicable provisions of the DC State Plan for Equal Employment Opportunity in Apprenticeship adopted pursuant to 29 CFR part 30 and approved by the Department of Labor, Office of Apprenticeship.

1110.2 Any controversy or difference arising under an Apprenticeship Agreement which cannot be adjusted locally and which is not covered by a collective bargaining agreement, may be submitted by an apprentice or the apprentice's authorized representative to either the Federal or State Registration Agency which has registered and/or approved the program in which the apprentice is enrolled, for review.

1110.3 All matters covered by a collective bargaining agreement are not subject to such review.

1110.4 The complaint must be in writing, and signed by the complainant, or authorized representative, and must be submitted within sixty (60) days of the final local decision. It must set forth the specific matter(s) complained of, together with relevant facts and circumstances. Copies of all pertinent documents and correspondence must accompany the complaint.

1110.5 The Associate Director shall make every effort to informally resolve the complaint.

1110.6 The Associate Director shall report all unresolved complaints with recommendations for resolution to the Agency within sixty (60) days.

1110.7 The Registration Agency shall investigate the matters submitted as may be found necessary, on the record before it and make reasonable efforts to resolve the complaint between the parties involved. If so resolved, the parties will be notified that the case is closed. If necessary to resolve disputed questions of material fact, the Registration Agency will hold a hearing. Otherwise, the Agency shall make a decision based upon the investigation and pertinent facts of the matter within (10) days.

1110.8 The Registration Agency shall notify all parties of the decision which shall be a final administrative action. Nothing in this section precludes an apprentice from pursuing any other remedy authorized under federal or District of Columbia law.

1111 LIMITATIONS

1111.1 Nothing in this part or in any apprenticeship agreement will operate to invalidate:

(a) Any Apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(b) Any special provision for veterans, minority persons, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement which is not otherwise prohibited by law, executive order or authorized rules and regulations.

1199 DEFINITIONS

1199.1 The definitions contained in the Act (D.C. Official Code §§ 32-1401 *et seq.*) shall apply to this chapter. In addition, the following terms shall have the meaning ascribed:

Administrator – means the Administrator of the Office of Apprenticeship, United States Department of Labor, or any person specifically designated by the Administrator.

Apprentice – means a worker at least sixteen (16) years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn an apprenticeable occupation as provided in Section 1104 under standards of apprenticeship fulfilling the requirements of Section 1105 of this chapter.

Apprenticeship Agreement – means a written agreement between an apprentice and either the apprentice's program sponsor, or an apprenticeship committee acting as agent for the program sponsor(s), which contains the terms and conditions of the employment and training of the apprentice in conformance with Section 1109 of this chapter.

Apprenticeship Committee – means those persons designated by the sponsor to administer the program. A committee may be either joint or non-joint, as follows:

(a) A joint committee is composed of an equal number of representatives of the employees represented by a *bona fide* collective bargaining agent(s) and employers.

(b) A non-joint committee, which may also be known as a unilateral or group non-joint (which may include employees) committee which

has employer representatives but does not have a *bona fide* collective bargaining agent as a participant.

Apprenticeship Program – means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and the training of apprentices, as required under 29 CFR parts 29 and 30, and D.C. Apprenticeship Agency Rules and Regulations and the D.C. State Plan, including such matters as the requirement for a written apprenticeship agreement.

Cancellation – means the termination of the registration or approval status of an apprenticeship program at the request of the sponsor, or termination of an apprenticeship agreement at the request of the apprentice.

Certification or certificate – means the written approval by the District of Columbia Apprenticeship Agency of a set of apprenticeship standards or of an individual for employment as an apprentice or probationary apprentice in a registered apprenticeship program or has successfully met the requirements to receive an interim credential or that an apprentice has successfully completed the apprenticeship.

Competency - means the attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by an appropriate written and hands-on proficiency measurement.

Completion Rate - means the percentage of an apprenticeship cohort who receives a certificate of apprenticeship completion within 1 year of the projected completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a 1 year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been cancelled during the probationary period.

D.C. Apprenticeship Act – means An Act to provide for voluntary apprenticeship in the District of Columbia, approved May 21, 1946 (60 Stat. 205; D.C. Official Code § 32-1404 (2012 Repl. & 2016 Supp.)).

Department – means the U.S. Department of Labor.

Deregistration of Programs – means the termination of the registration or approval status of an apprenticeship program upon written request of the sponsor or upon cause by the Apprenticeship Agency instituting formal deregistration proceedings in accordance with the provisions of this chapter.

Director – means the Director of the District of Columbia Department of Employment Services or any person designated by the Director to supervise the administration of the provisions of the Act.

District of Columbia State Plan for Equal Opportunity in Apprenticeship Training – means a plan outlining policies and procedures for promoting equality of opportunity in the recruiting and selection of apprentices and in all conditions of employment and training during the term of apprenticeship, adopted in accordance with 29 CFR Part 30.

Electronic Media - means media that utilize electronics or electromechanical energy for the end user (audience) to access the content. It includes, but is not limited to, electronic storage media, transmission media, the Internet, extranet, lease lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic media and/or interactive distance learning.

Employer – means any person or organization employing an apprentice whether or not such person or organization is a party to an Apprenticeship Agreement with the apprentice.

Federal purposes - includes any federal contract, grant, agreement or arrangement dealing with apprenticeship. It includes any federal financial or other assistance, benefit, privilege, contribution, allowance, exemption, preference or right pertaining to apprenticeship.

Interim Credential – means a credential issued by the Registration Agency, upon the request of the appropriate sponsor, as certification of competency attainment by an apprentice.

Journeyworker – means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. (Use of the term may also refer to a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation either through formal apprenticeship or through practical on-the-job experience and formal training),

Office of Apprenticeship – means the office designated by the U.S. Department of Labor, Employment and Training Administration to administer the National Apprenticeship System or its successor organization.

Provisional Registration – means the one year initial provisional approval of newly registered programs that meet the required standards for program registration, after which program approval may be made permanent, continued as provisional, or rescinded following a review by the

Registration Agency, as provided for in the criteria described in Section 1103 of this chapter.

Quality Assurance Assessment – means a comprehensive review conducted by the Registration Agency regarding all aspects of an apprenticeship program's performance, including but not limited to the following:

(a) Determining if apprentices are receiving on-the-job training in all phases of the apprenticeable occupation;

(b) Scheduled wage increases consistent with the registered standards; and,

(c) Related instruction through appropriate curriculum and delivery systems.

It also means that the registration agency is receiving notification of all new registrations, cancellations, and completions as required in this part.

Registration Agency - means the District of Columbia Office of Apprenticeship, Information and Training within the Department of Employment Services that has responsibility for registering apprenticeship programs and apprentices, providing technical assistance,, conducting review for compliance with District rules and regulations and the DC State Plan for equal employment opportunities, and Section 1100 of this part.

Registration of an apprenticeship agreement – means the acceptance and recording of an apprenticeship agreement by the Registration Agency as evidence of the apprentice's participation in a particular registered apprenticeship program.

Registration of an apprenticeship program - means the acceptance and recording of such program by the Registration Agency and/or the approval by the Office of Apprenticeship, U.S. Department of Labor, or another recognized State Apprenticeship Agency, as meeting the basic standards and requirements of the District of Columbia Registration Agency for approval of such program for federal purposes. Approval is evidenced by a Certificate of Registration or other written indicia.

Related Instruction – means an organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to the apprentice's occupation. Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the Registration Agency. The sponsor shall be responsible for the administration and supervision of

related and supplemental instruction for apprentices and coordination of the instruction with job experience.

Sponsor – means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

State –means any of the fifty (50) States of the United States, the District of Columbia, or any territory or possession of the United States.

State Office – means for the purpose of referencing federal regulations on apprenticeship, the District of Columbia, Office of Apprenticeship, Information and Training of the Department of Employment Services which shall be the point of contact for the District's Registration Agency.

State Apprenticeship Agency – means the Registration Agency (District of Columbia Office of Apprenticeship, Information and Training within the Department of Employment Services) which shall have the responsibility and accountability for apprenticeship within the District and is recognized by the U.S. Department of Labor, Office of Apprenticeship with the authority to register and oversee apprenticeship programs and agreements for federal purposes.

State Apprenticeship Council – means the D.C. Apprenticeship Council, which is a regulatory entity consisting of eleven members, who are appointed by the Mayor of the District of Columbia and confirmed by the Council of the District of Columbia. Apprenticeship Council members include equal representation of employer, employee and public representatives, and two (2) government representatives. The D.C. Apprenticeship Council shall have the authority to approve apprenticeship programs subject to the District government mandatory apprenticeship law, for projects that receive funds or resources from the District of Columbia, or funds or resources which, in accordance with a federal grant or otherwise, the District of Columbia government administers, including contracts, grants, loans, tax abatements or exemptions, land transfers, land disposition and development agreements, tax increment financing, or any combination thereof.

Technical Assistance – means guidance provided by the Registration Agency staff in the development, revision, amendment, or processing of potential or current program sponsor's Standards of Apprenticeship, Apprenticeship Agreements, or advice or consultation with a program sponsor to further compliance with these rules or guidance from the Office of Apprenticeship to a State Apprenticeship Agency on how to remedy nonconformity with this part.

Transfer – means a shift of apprenticeship registration from one program to another or from one employer within a program to another employer within the same program, where there is agreement between the apprentice and the affected apprenticeship committees or program sponsors.

All persons wishing to comment on these proposed rules shall submit written comments no later than thirty (30) days after the publication of this notice in the *D.C. Register* to Tonya Sapp, General Counsel, Department of Employment Services, 4058 Minnesota Ave, N.E., Suite 5800, Washington, D.C. 20019 or email at tonya.robinson@dc.gov. Copies of the proposed ruled may be obtained from the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, excluding holidays. Questions may be directed to (202) 671-1195 or via the addresses listed above.

DEPARTMENT OF EMPLOYMENT SERVICES

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Employment Services, pursuant to the authority of Title III-A of the Sustainable DC Omnibus Amendment Act of 2014 (Act), effective December 17, 2014 (D.C. Law 20-142; D.C. Official Code § 32-153 (2012 Repl.)) and Mayor's Order 2016-004, gives notice of the intent to adopt the following rules to add a new Chapter 33 entitled "Transit Benefit Programs" to Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (DCMR).

The new chapter will establish a transit benefit program for covered employers. The purpose of the Act is to reduce single occupancy vehicle use by encouraging employers to provide transit benefits to their employees and establish policies and procedures to ensure that covered employers provide commuter benefits to their employees consistent with the requirements established under the Act.

Under Section 302 of the Act, covered employers, *i.e.*, those with twenty (20) or more employees, are required to provide one (1) of three (3) transit benefit options to their employees. The rulemaking provides penalties, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 *et seq.*, for covered employers who fail to offer at least one (1) transportation benefit program. The penalties will go into effect when the rulemaking becomes effective.

The Director gives notice of intent to take final rulemaking action to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 33, TRANSIT BENEFIT PROGRAMS, of Title 7 DCMR, EMPLOYMENT BENEFITS, is added to read as follows:

3300 PURPOSE AND SCOPE

3300.1 The purpose of this chapter is to establish standards and procedures for the implementation of Title III-A of the Sustainable DC Omnibus Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-142; D.C. Official Code § 32-152) (the "Act").

3300.2 Unless otherwise required by law, all matters concerning the implementation and enforcement of the Act shall be determined in accordance with these regulations.

3301 TRANSIT BENEFIT PROGRAMS

3301.1 Every covered employer must provide at least one (1) of the following three (3) transportation benefit programs to each of its covered employees who have been employed for not less than ninety (90) calendar days:

(a) An employee pre-tax election transportation fringe benefits program that provides:

(1) Transportation in a commuter highway vehicle in connection with travel between the employee's residence and place of employment, at a benefit level at least equal to the maximum amount of such a fringe benefit that may be deducted from an employee's gross income under the Internal Revenue Code;

(2) A transit pass, at a benefit level at least equal to the maximum amount of such a fringe benefit that may be deducted from an employee's gross income under the Internal Revenue Code; or

(3) Bicycling benefits consistent with Section 132(g)(1)(D) and (F) of the Internal Revenue Code at a benefit level that is at least equal to the maximum applicable annual limitation for any qualified bicycle commuting reimbursement program or federal standards that govern bicycling commuter options.

(b) An employer-paid benefit program whereby the employer supplies, at the election of the employee, a transit pass for the public transit system requested by each covered employee or reimbursement of vanpool or bicycling costs in an amount at least equal to the purchase price of a transit pass for an equivalent trip on a public transit system for commuting-related expenses; or

(c) Employer provided commuter transportation at no cost to covered employees in a vanpool or bus operated by or for the employer.

3301.2 Unless provided otherwise by an employer, transit benefits shall not be convertible to wages or paid leave, shall not be transferable, and shall have no cash value at the end of an employee's employment. Unused transit benefits shall expire at such time as shall be designated by the employer, which shall not be earlier than the end of each month.

3302 PENALTIES AND FINES

3302.1 Covered employers who fail to offer at least one (1) transportation benefit program listed in Subsection 3301.1 shall be subject to civil fines and penalties, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 *et seq*.

3302.2 The failure to offer at least one (1) transportation benefit program option is a Class 5 infraction pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 *et seq.* The fines under Class 5 infractions are as follows:

(a) For the first offense, fifty dollars ($50);

(b) For the second offense, one hundred dollars ($100);

(c) For the third offense, two hundred dollars ($200);

(d) For the fourth and subsequent offenses, four hundred dollars ($400).

3303 NOTICE REQUIREMENTS

3303.1 The Department shall post an electronic notification on its website that explains the requirements of the Act**.**

3303.2 Covered employers shall notify covered employees of the available transit benefit program using commercially appropriate means, such as email, internal documents (such as memos, newsletters or bulletins), or conventional or electronic bulletin boards.

3303.3 Covered employers shall provide information to covered employees as to how they may apply for and receive the transit benefit.

3303.4 Covered employers shall provide a point of contact for covered employees to obtain further information about the transit benefit.

3303.5 Covered employers shall provide commuter benefits documents to each covered employee as part of the employee benefits package or with the Notice of Hire form required by the Wage Theft Amendment Act of 2014, approved September 19, 2014, D.C. Act 20-426, D.C. Official Code §§ 32-1301 *et seq*.

3304 CALCULATION OF NUMBER OF EMPLOYEES

3304.1 In determining whether it is a covered employer under this chapter, an employer shall use the greater of (1) the number of full-time and part-time employees as of December 31st of the previous year or (2) the average number of employees during the previous calendar year, to determine its number of employees.

3305 COLLECTIVE BARGAINING AGREEMENTS

3305.1 If a collective bargaining agreement exists between an employer and any group of employees of the employer, the employer shall not be required by this chapter to provide transit benefits to any of its employees; except, if the number of employees not covered by any such agreement is twenty (20) or more, the employer must provide the transit benefits required by this chapter to its covered employees (as defined in § 3399.2) who are not covered by any such agreement.

3306 RECORDKEEPING REQUIREMENTS

3306.1 Covered employers shall maintain any documentation necessary to establish compliance with the requirements of the Act for a minimum of three (3) years.

3306.2 Covered employers shall be responsible for providing any documentation necessary to prove compliance with the Act to the Department.

3307 COMPLAINT PROCEDURES

3307.1 Covered employees may file complaints alleging violations of the Act with the Department.

3307.2 (a) A complaint shall include:

(1) A sworn allegation of a covered employer's failure to provide a transit benefit program;

(2) The complainant's name, address, email, and telephone number;

(3) Pay stubs or relevant documents that demonstrate the violation; and

(4) Sufficient information to enable the Mayor to identify the covered employer through District records, such as the employer's name, business address, telephone number, and email.

(b) Failure to include required information in a complaint may be excused for lack of applicability or unreasonable hardship.

3307.3 Enforcement and adjudication of a failure to provide a transit benefit program shall be pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 *et seq.*

3399 DEFINITIONS

3399.1

Act means Title III-A of the Sustainable DC Omnibus Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-142, D.C. Official Code § 32-152).

Covered employee means a full-time or part-time employee of a covered employer:

(a) Who performs at least fifty percent (50%) of his or her working time in the District of Columbia; or

(b) Whose employment is based in the District of Columbia and the employee performs a substantial amount of his or her work in the District of Columbia and less than fifty percent (50%) in any other state.

Covered employer means an employer with twenty (20) or more covered employees.

Department means the Department of Employment Services.

Employee includes any individual employed by an employer, except that this term shall not include:

(a) Any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization;

(b) Any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions; or

(c) Any individual employed as a casual babysitter, in or about the residence of the employer.

(d) An independent contractor.

Employer includes the District of Columbia government, any individual, partnership, general contractor, subcontractor, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States Government.

Full-time employees include individuals who work thirty (30) hours or more per week, unless established otherwise by law.

Part-time employees include individuals who work less than thirty (30) hours per week, unless established otherwise by law.

Transit Pass includes any pass, token, farecard, voucher or similar item entitling a person to transportation (or transportation at a reduced price) if such transportation is:

(a) On mass transit facilities (whether or not publicly owned), including a bus, streetcar, or train operated by the Washington Metropolitan Area Transit Authority, Maryland Area Regional Commuter, Virginia Railway Express, or the National Railroad Passenger Corporation (Amtrak); or

(b) Provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a highway vehicle that has a seating capacity of which is at least six (6) adults (not including the driver).

Vanpool means any highway vehicle:

(a) The seating capacity of which is at least six (6) adults (not including the driver); and

(b) At least eighty percent (80%) of the mileage use of which can reasonably be expected to be:

(1) For purposes of transporting employees in connection with travel between their residences and their place of employment; and

(2) On trips during which the number of employees transported for such purposes is at least half (1/2) of the adult seating capacity of such vehicle, (not including the driver).

All persons wishing to comment on these proposed rules shall submit written comments no later than thirty (30) days after the publication of this notice in the *D.C. Register* to Tonya Sapp, General Counsel, Department of Employment Services, 4058 Minnesota Ave, N.E., Suite 5800, Washington, D.C. 20019 or email at tonya.robinson@dc.gov. Copies of the proposed ruled may be obtained from the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, excluding holidays. Questions may be directed to (202) 671-1195 or via the addresses listed above.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

Water Quality Standards - 2016 Triennial Review

The Director of the Department of Energy and Environment (DOEE or Department), in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq*. (2013 Repl. & 2016 Supp.)); Sections 5 and 21 of the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.04 and 8-103.20 (2013 Repl. & 2016 Supp.)); and Mayor's Order 98-50, dated April 15, 1998, as amended by Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the proposed rulemaking action to amend Chapter 11 (Water Quality Standards) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR).

The Department's Water Quality Division is conducting a triennial review of the District of Columbia's Water Quality Standards regulations as required by Section 5(a) of the Water Pollution Control Act (D.C. Official Code § 8-103.04(a)) and Section 303(c) of the federal Clean Water Act (33 U.S.C. § 1313(c)).

Proposed changes to the water quality standards include updates to the aquatic life criteria for ammonia and cadmium, and human health criteria for ninety-four (94) constituents.

Proposed updates to the ammonia criteria are based on EPA's latest scientific studies and new toxicity data on freshwater mussels and gill-breathing snails in the 2013 Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater, published by EPA (EPA 822-R-13-001). Ammonia can be toxic to fish and other invertebrates in waterbodies.

Changes to the aquatic life criteria proposed for cadmium adhere to the 2016 Aquatic Life Ambient Water Quality Criteria – Cadmium (EPA 820-R-16-002). Chronic cadmium exposure leads to adverse effects in the growth, reproductive, immune, and endocrine systems of aquatic organisms, which impacts their development and behavior.

The changes made to the human health criteria are based on the Environmental Protection Agency (EPA's) latest scientific studies in the 2015 Human Health Water Quality Criteria. The revised standards for these organic constituents are intended to protect residents and visitors from exposure to these pollutants, particularly for those who eat fish or shellfish from District waters as a significant portion of their regular diet.

DOEE is also proposing changes to the *E. coli* recreational water quality criteria based on EPA's 2012 Recreational Water Quality Criteria (EPA 820-F-12-058). The *E. coli* recreational criteria update establishes a new measurement of "statistical threshold value" and a new unit of measurement of "colony forming unit." The previous *E. coli* criteria used a measurement of "single sample maximum" and a unit of "most probable number." The duration for the geometric mean criteria will be updated from thirty (30) days to ninety (90) days.

Finally, the proposed rulemaking updates abbreviations and definitions. All other provisions, tables, and definitions in the Water Quality Standards chapter remain unchanged.

Before the final water quality standards are promulgated, DOEE will conduct an analysis of the environmental, technological, institutional, and socio-economic impacts of applying and enforcing the proposed standards as required by the Water Pollution Control Act, D.C. Official Code § 8-103.04. The public is invited to present information and comments regarding the scope and approach for conducting the required impact analysis of the above proposed regulations.

Chapter 11, WATER QUALITY STANDARDS, Title 21 DCMR, WATER AND SANITATION, is amended as follows:

Section 1104, STANDARDS, Subsection 1104.8, is amended to read as follows:

1104.8 Unless otherwise stated, the numeric criteria that shall be met to attain and maintain designated uses are as follows in Tables 1 through 3:

Table 1: Conventional Constituents Numeric Criteria

Constituent[a]	Class A	Class B	Class C
Chlorophyll *a*[b,c] (μg/L)(seasonal segment average)			
July 1 through September 30	—	—	25
Dissolved Oxygen (mg/L)			
Instantaneous minimum (year-round)[d]	—	—	5.0
February 1 through May 31[b,c]			
7-day mean	—	—	6.0
Instantaneous minimum	—	—	5.0
June 1 through January 31[b,c]			
30-day mean	—	—	5.5
7-day mean	—	—	4.0
Instantaneous minimum[e]	—	—	3.2
E. coli[f] (colony forming units (cfu)/100 mL)			
90-day Geometric mean (GM)	126	—	—
Statistical Threshold Value (STV)	410	—	—
Hydrogen Sulfide (maximum μg/L)	—	—	2.0
Oil and Grease (mg/L)	—	—	10.0
pH			
Greater than	6.0	6.0	6.0
And less than	8.5	8.5	8.5
Secchi Depth[b,c] (m)(seasonal segment average)			
April 1 through October 31	—	—	0.8
Temperature (°C)			
Maximum	—	—	32.2

Constituent[a]	Class A	Class B	Class C
Maximum change above ambient	—	—	2.8
Total Dissolved Gases (maximum % saturation)	—	—	110
Turbidity Increase above Ambient (NTU)	20	20	20

Notes:

[a] No more than ten percent (10%) criteria exceedances of the WQS may be allowed when interpreting data for conventional pollutants when assessing water quality standards attainment or impairment status for the purposes of reporting under CWA Section 305(b) and listing under CWA Section 303(d). Where the ten percent (10%) exceedance is not a specific criteria recommendation, the application of the ten percent exceedance assessment will be addressed in an assessment methodology.

The attainment of these WQS or impairment status will be determined in accordance with the following US EPA guidance documents: Guidelines for Preparation of the State Comprehensive Water Quality Assessments 305(b) Reports and Electronic Updates, EPA 841-B-97-002A and B (1997); Consolidated Assessment and Listing Methodology – Toward a Compendium of Best Practices (EPA 1st ed. 2002); and Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act (Diane Regas, July 29, 2005). Future guidance documents will also be considered when they are issued.

[b] Attainment of the dissolved oxygen, water clarity and chlorophyll *a* water quality criteria that apply to tidal influenced Class C waters will be determined following the guidelines documented in the 2003 United States Environmental Protection Agency publication: Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll *a* for the Chesapeake Bay and its Tidal Tributaries, EPA 903-R-03-002 (April 2003, Region III Chesapeake Bay Program Office, Annapolis, Maryland); 2004 Addendum, EPA 903-R-04-005 (October 2004); 2007 Addendum, EPA 903-R-07-003 CBP/TRS 285/07 (July 2007); 2007 Chlorophyll Criterion Addendum, EPA 903-R-07-005 CBP/TRS 288-07 (November 2007); 2008 Addendum, EPA 903-R-08-001 CBP/TRS 290-08 (September 2008); and 2010 Criterion Addendum, EPA 903-R-10-002 CBP/TRS-301-10 (May 2010).

[c] Shall apply to tidally influenced waters only.

[d] This criterion applies to nontidal waters.

[e] At temperatures greater than in tidally influenced waters, an instantaneous minimum dissolved oxygen concentration of 4.3mg/L shall apply.

[f] The geometric mean (GM) and statistical threshold value (STV) criteria shall be used for assessing water quality trends, permitting, and all other Clean Water Act applications. The waterbody geometric mean shall not be greater than the ninety-day (90-day) geometric mean magnitude in any continuous ninety-day (90-day) interval. There shall not be greater than a ten percent (10%) excursion frequency of the STV magnitude within the same ninety-day (90-day) interval. *E. coli* shall be measured using EPA-approved culturable Method 1603 or equivalent methods as recommended by the 2012 Recreational Water Quality Criteria, (EPA 820-F-12-

058).

Table 2: Trace Metals and Inorganics Numeric Criteria

Constituent[a] Trace metals and inorganics in μg/L, except where stated otherwise (see Notes below)	**Class C**		**Class D**[b]
	CCC 4-Day Avg	**CMC 1-Hour Avg**	**30-Day Avg**
Ammonia, mg total ammonia nitrogen (TAN)/L	See Note g	See Note h	—
Antimony, dissolved	—	—	640
Arsenic, dissolved	150	340	0.14[c]
Cadmium, dissolved	See Notes d and e	See Notes d and e	—
Chlorine, total residual	11	19	—
Chromium, hexavalent, dissolved	11[d]	16[d]	—
Chromium, trivalent, dissolved	See Notes d and e	See Notes d and e	—
Copper, dissolved	See Notes d and e	See Notes d and e	—
Cyanide, free	5.2	22	400
Iron, dissolved	1,000	—	—
Lead, dissolved	See Notes d and e	See Notes d and e	—
Mercury, total recoverable	0.77[d]	1.4[d]	0.15[d]
Methylmercury (mg/kg, fish tissue residue)	—	—	0.3
Nickel, dissolved	See Notes d and e	See Notes d and e	4,600
Selenium, total recoverable	5	20	4,200
Silver, dissolved	—	See Notes d and e	65,000
Thallium, dissolved	—	—	0.47
Zinc, dissolved	See Notes d and e	See Notes d and e	26,000

Notes:

[a] For constituents with blank numeric criteria, EPA has not calculated standards at this time. However, permit authorities will address these constituents in National Pollutant Discharge Elimination System (NPDES) permit actions using the narrative criteria for toxics.

[b] The Class D Human Health Criteria for metals will be based on Total Recoverable metals.

[c] The criteria is based on carcinogenicity of 10^{-6} risk level.

[d] The formulas for calculating the criterion for the hardness dependent constituents indicated above are as follows:

Table 2a: Formulas for Hardness-Dependent Constituents[f]

Constituent	**CCC** μg/L	**CMC** μg/L
Cadmium	$e^{(0.7977[\ln(\text{hardness})] - 3.909)}$	$e^{(0.9789[\ln(\text{hardness})] - 3.866)}$
Chromium III	$e^{(0.8190[\ln(\text{hardness})] + 0.6848)}$	$e^{(0.8190[\ln(\text{hardness})] + 3.7256)}$

Constituent	CCC μg/L	CMC μg/L
Copper	$e^{(0.8545[\ln(\text{hardness})] - 1.702)}$	$e^{(0.9422[\ln(\text{hardness})] - 1.700)}$
Lead	$e^{(1.2730[\ln(\text{hardness})] - 4.705)}$	$e^{(1.2730[\ln(\text{hardness})] - 1.460)}$
Nickel	$e^{(0.8460[\ln(\text{hardness})] + 0.0584)}$	$e^{(0.8460[\ln(\text{hardness})] + 2.255)}$
Silver	—	$e^{(1.7200[\ln(\text{hardness})] - 6.590)}$
Zinc	$e^{(0.8473[\ln(\text{hardness})] + 0.884)}$	$e^{(0.8473[\ln(\text{hardness})] + 0.884)}$

[e] The criterion derived from the formulas under Note d is multiplied by the conversion factor in Table 2b as specified in Subsection 1105.10:

Table 2b: Conversion Factors[f]

Constituent	CCC	CMC
Cadmium	1.101672 − [(ln hardness)(0.041838)]	1.136672 − [(ln hardness)(0.041838)]
Chromium III	0.860	0.316
Chromium VI	0.962	0.982
Copper	0.960	0.960
Lead	1.46203 − [(ln hardness)(0.145712)]	1.46203 − [(ln hardness)(0.145712)]
Mercury	0.85	0.85
Nickel	0.997	0.998
Silver	—	0.85
Zinc	0.986	0.978

[f] Hardness in Tables 2a and 2b shall be measured as mg/L of calcium carbonate ($CaCO_3$). The minimum hardness value allowed for use in these formulas shall not be less than 25 mg/L as $CaCO_3$, even if the actual ambient hardness is less than twenty-five (25) mg/L as $CaCO_3$. The maximum hardness value allowed for use in these formulas shall not exceed four hundred (400) mg/L as $CaCO_3$, even if the actual ambient water hardness is greater than 400 mg/L as $CaCO_3$.

[g] Criterion Continuous Concentration (CCC) for total ammonia nitrogen (in mg TAN/L):

(a) The CCC for total ammonia nitrogen (in mg TAN/L) (i) shall be the thirty (30) day average concentration for total ammonia nitrogen computed for a design flow specified in Subsection 1105.5; and (ii) shall account for the influence of the pH and temperature as shown in Table 2c. The highest four (4) day average within the thirty (30) day period shall not exceed 2.5 times the CCC.

(b) The CCC in Table 2c was calculated using the following formula, which shall be used to calculate unlisted values: CCC =

$$0.8876 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(2.126 \times 10^{0.028 \times (20-MAX(T,7))}\right)$$

Table 2c: Total Ammonia Nitrogen (in milligrams of total ammonia nitrogen per liter (mg TAN/L) CCC for Various pH and Temperatures

Temperature (°C)																								
pH	**0-7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8	2.6	2.4	2.3	2.1	2.0	1.9	1.8	1.6	1.5	1.5	1.4	1.3	1.2	1.1
6.6	4.8	4.5	4.3	4.0	3.8	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1
6.7	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3.0	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1
6.8	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3.0	2.8	2.6	2.4	2.3	2.1	2.0	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1
6.9	4.5	4.2	4.0	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1.0
7.0	4.4	4.1	3.8	3.6	3.4	3.2	3.0	2.8	2.6	2.4	2.3	2.2	2.0	**1.9**	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99
7.1	4.2	3.9	3.7	3.5	3.2	3.0	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1.0	0.95
7.2	4.0	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1.0	0.96	0.90
7.3	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1.0	0.97	0.91	0.85
7.4	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1.0	0.96	0.90	0.85	0.79
7.5	3.2	3.0	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1.0	0.95	0.89	0.83	0.78	0.73
7.6	2.9	2.8	2.6	2.4	2.3	2.1	2.0	1.9	1.8	1.6	1.5	1.4	1.4	1.3	1.2	1.1	1.1	0.98	0.92	0.86	0.81	0.76	0.71	0.67
7.7	2.6	2.4	2.3	2.2	2.0	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1.0	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.60
7.8	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1.0	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53
7.9	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1.0	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.50	0.47
8.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1.0	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.60	0.56	0.53	0.50	0.44	0.44	0.41
8.1	1.5	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81	0.76	0.71	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.40	0.38	0.35
8.2	1.3	1.2	1.2	1.1	1.0	0.96	0.90	0.84	0.79	0.74	0.70	0.65	0.61	0.57	0.54	0.50	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.30
8.3	1.1	1.1	0.99	0.93	0.87	0.82	0.76	0.72	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.40	0.38	0.35	0.33	0.31	0.29	0.27	0.26
8.4	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.50	0.47	0.44	0.41	0.39	0.36	0.34	0.32	0.30	0.28	0.26	0.25	0.23	0.22
8.5	0.80	0.75	0.71	0.67	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.40	0.37	0.35	0.33	0.31	0.29	0.27	0.25	0.24	0.22	0.21	0.20	0.18
8.6	0.68	0.64	0.60	0.56	0.53	0.49	0.46	0.43	0.41	0.38	0.36	0.33	0.31	0.29	0.28	0.26	0.24	0.23	0.21	0.20	0.19	0.18	0.16	0.15
8.7	0.57	0.54	0.51	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.30	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13
8.8	0.49	0.46	0.43	0.40	0.38	0.35	0.33	0.31	0.29	0.27	0.26	0.24	0.23	0.21	0.20	0.19	0.17	0.16	0.15	0.14	0.13	0.13	0.12	0.11
8.9	0.42	0.39	0.37	0.34	0.32	0.30	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.12	0.11	0.10	0.09
9.0	0.36	0.34	0.32	0.30	0.28	0.26	0.24	0.23	0.21	0.20	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.11	0.11	0.10	0.09	0.09	0.08

[h] Criterion Maximum Concentration (CMC) for total ammonia nitrogen (in mg TAN/L):

(a) The CMC for total ammonia nitrogen (in mg TAN/L) (i) shall be the one (1) average concentration for total ammonia nitrogen, computed for a design flow specified in Subsection 1105.5; and (ii) shall account for the influence of the pH as shown in Table 2d.

(b) The CMC was calculated using the following formula, which shall be used to calculate unlisted values: CMC =

$$MIN\left(\left(\frac{0.275}{1 + 10^{7.204 - pH}} + \frac{39.0}{1 + 10^{pH - 7.204}}\right)\right),$$

$$\left(0.7249 \times \left(\frac{0.0114}{1 + 10^{7.204 - pH}} + \frac{1.6181}{1 + 10^{pH - 7.204}}\right) \times \left(23.12 \times 10^{0.036 \times (20 - T)}\right)\right)$$

Table 2d: Total Ammonia Nitrogen (in milligrams of total ammonia nitrogen per liter (mg TAN/L) CMC for Various pH and Temperatures

Temperature (°C)																					
pH	**0-10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	51	48	44	41	37	34	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	49	46	42	39	36	33	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	46	44	40	37	34	31	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9.0
6.8	44	41	38	35	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	41	38	35	32	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7.0	38	35	33	30	28	25	23	21	20	18	**17**	15	14	13	12	11	10	9.4	8.6	7.9	7.3
7.1	34	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	31	29	27	25	23	21	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6.0
7.3	27	26	24	22	20	18	17	16	14	13	12	11	10	9.5	8.7	8.0	7.4	6.8	6.3	5.8	5.3
7.4	24	22	21	19	18	16	15	14	13	12	11	9.8	9.0	8.3	7.7	7.0	6.5	6.0	5.5	5.1	4.7
7.5	21	19	18	17	15	14	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4.0
7.6	18	17	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9
7.8	13	12	11	10	9.3	8.5	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4.0	3.7	3.4	3.2	2.9	2.7	2.5
7.9	11	9.9	9.1	8.4	7.7	7.1	6.6	3.0	5.6	5.1	4.7	4.3	4.0	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8.0	8.8	8.2	7.6	7.0	6.4	5.9	5.4	5.0	4.6	4.2	3.9	3.6	3.3	3.0	2.8	2.6	2.4	2.2	2.0	1.9	1.7
8.1	7.2	6.8	6.3	5.8	5.3	4.9	4.5	4.1	3.8	3.5	3.2	3.0	2.7	2.5	2.3	2.1	2.0	1.8	1.7	1.5	1.4
8.2	6.0	5.6	5.2	4.8	4.4	4.0	3.7	3.4	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	4.9	4.6	4.3	3.9	3.6	3.3	3.1	2.8	2.6	2.4	2.2	2.0	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1.0	0.96
8.4	4.1	3.8	3.5	3.2	3.0	2.7	2.5	2.3	2.1	2.0	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0	0.93	0.86	0.79
8.5	3.3	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.90	0.83	0.77	0.71	0.65
8.6	2.8	2.6	2.4	2.2	2.0	1.9	1.7	1.6	1.5	1.3	1.2	1.1	1.0	0.96	0.88	0.81	0.75	0.69	0.63	0.58	0.54
8.7	2.3	2.2	2.0	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1.0	0.94	0.87	0.80	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.40	0.37	0.34	0.32
9.0	1.4	1.3	1.2	1.1	1.0	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

Table 3: Organic Constituents Numeric Criteria

Organic Constituent[a] (μg/L)	CAS Number	Chemical Family Group	Class C CCC 4-Day Avg	Class C CMC 1-Hour Avg	Class D 30-Day Avg
Acenaphthene	83-32-9	Polynuclear aromatic hydrocarbon	50	—	90
Acrolein	107-02-8	Acryl aldehyde	3.0	3.0	400
Acrylonitrile	107-13-1	Nonionic organic	700.0	—	7.0[b]
Aldrin	309-00-2	Pesticide	0.4	3.0	0.00000077[b]
alpha-Endosulfan	959-98-8	Endosulfan	0.056	0.22	30
alpha-Hexachlorocyclohexane (HCH)	319-84-6	Hexachlorocyclohexane	—	—	0.00039[b]
Anthracene	120-12-7	Polynuclear aromatic hydrocarbon	—	—	400
Benzene	71-43-2	Hydrocarbon	1,000	—	16[b]
Benzidine	92-87-5	Aromatic amine	250	—	0.011[b]
Benzo(a)anthracene	56-55-3	Polynuclear aromatic hydrocarbon	—	—	0.0013[b]
Benzo(a)pyrene	50-32-8	Polynuclear aromatic hydrocarbon	—	—	0.00013
Benzo(b)fluoranthene	205-99-2	Polynuclear aromatic hydrocarbon	—	—	0.0013
Benzo(k)fluoranthene	207-08-9	Polynuclear aromatic hydrocarbon	—	—	0.013
beta-Endosulfan	33213-65-9	Endosulfan	0.056	0.22	40
beta-Hexachlorocyclohexane (HCH)	319-85-7	Hexachlorocyclohexane	—	—	0.014[b]
Bis(2-Chloroethyl) Ether	111-44-4	Chloroalkyl ether	—	—	2.2
Bis(Chloromethyl) Ether	542-88-1	Chloroalkyl ether	—	—	0.017
Bis(2-Chloro-1-methylethyl) Ether	108-60-1	Chloroalkyl ether	—	—	4,000
Bis(2-Ethylhexyl) Phthalate	117-81-7	Phthalate ester	—	—	0.37[b]
Bromoform	75-25-2	Halomethane	—	—	120[b]
Butylbenzyl Phthalate	85-68-7	Phthalate ester	—	—	0.10
Carbaryl (Sevin)	63-25-2	Insecticide	2.1	2.1	—
Carbon Tetrachloride	56-23-5	Halomethane	1,000	—	5[b]
Chlordane	57-74-9	Insecticide	0.0043	2.4	0.00032[b]

Organic Constituent[a] (μg/L)	CAS Number	Chemical Family Group	Class C CCC 4-Day Avg	Class C CMC 1-Hour Avg	Class D 30-Day Avg
Chlorobenzene	108-90-7	Chlorinated benzene	—	—	800
Chlorodibromomethane	124-48-1	Halomethane	—	—	21[b]
Chloroform	67-66-3	Halomethane	3,000	—	2,000[b]
2-Chloronaphthalene	91-58-7	Chlorinated naphthalene	200	—	1,000
2-Chlorophenol	95-57-8	Chlorinated phenol	100	—	800
Chlorophenoxy Herbicide (2,4-D)	94-75-7	Herbicide	—	—	12,000
Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]	93-72-1	Herbicide	—	—	400
Chrysene	218-01-9	Polynuclear aromatic hydrocarbon	—	—	0.13[b]
Dibenzo(a,h)anthracene	53-70-3	Polynuclear aromatic hydrocarbon	—	—	0.00013[b]
1,2-Dichlorobenzene	95-50-1	Chlorinated benzene	200	—	3,000
1,3-Dichlorobenzene	541-73-1	Chlorinated benzene	200	—	10
1,4-Dichlorobenzene	106-46-7	Chlorinated benzene	200	—	900
3,3'-Dichlorobenzidine	91-94-1	Chlorinated aromatic amine	10	—	0.15[b]
Dichlorobromomethane	75-27-4	Halomethane	—	—	27[b]
1,2-Dichloroethane	107-06-2	Chlorinated ethane	—	—	650[b]
1,1-Dichloroethylene	75-35-4	Dichloroethylene	—	—	20,000[b]
2,4-Dichlorophenol	120-83-2	Chlorinated phenol	200	—	60
1,2-Dichloropropane	78-87-5	Volatile organic compound	2,000	—	31[b]
1,3-Dichloropropene	542-75-6	Chlorocarbon	—	—	12
Dieldrin	60-57-1	Organochloride insecticide	0.056	0.24	0.0000012[b]
Diethyl Phthalate	84-66-2	Phthalate ester	—	—	600
2,4-Dimethylphenol	105-67-9	Semivolatile organic compound	200	—	3,000
Dimethyl Phthalate	131-11-3	Phthalate ester	—	—	2,000
Di-n-Butyl Phthalate	84-74-2	Phthalate ester	—	—	30
2,4-Dinitrophenol	51-28-5	Dinitrophenol	—	—	300
Dinitrophenols	25550-58-7	Dinitrophenol	—	—	1,000
2,4-Dinitrotoluene	121-14-2	Amino compound	33	—	1.7
1,2-Diphenylhydrazine	122-66-7	Semivolatile organic compound	30	—	0.2[b]
Endosulfan Sulfate	1031-07-	Chlorinated	—	—	40

Organic Constituent[a] (μg/L)	CAS Number	Chemical Family Group	Class C CCC 4-Day Avg	Class C CMC 1-Hour Avg	Class D 30-Day Avg
	8	hydrocarbon insecticide			
Endrin	72-20-8	Insecticide	0.036	0.086	0.03
Endrin Aldehyde	7421-93-4	Pesticide	—	—	1
Ethylbenzene	100-41-4	Aromatic hydrocarbon	40	—	130
Fluoranthene	206-44-0	Polynuclear aromatic hydrocarbon	400	—	20
Fluorene	86-73-7	Polynuclear aromatic hydrocarbon	—	—	70
gamma-BHC (Lindane)	58-89-9	Hexachlorocyclohexane	0.08	0.95	4.4[b]
Guthion	86-50-0	Organophosphate	0.01	—	—
Heptachlor	76-44-8	Organochlorine insecticide	0.0038	0.52	0.0000059[b]
Heptachlor Epoxide	1024-57-3	Organochlorine insecticide	0.0038	0.52	0.000032[b]
Hexachlorobenzene	118-74-1	Chlorinated benzene	—	—	0.000079[b]
Hexachlorobutadiene	87-68-3	Chlorinated aliphatic diene	10	—	0.01[b]
Hexachlorocyclohexane (HCH) -Technical	608-73-1	Insecticide	—	—	0.010
Hexachlorocyclopentadiene	77-47-4	Organochlorine	0.5	—	4
Hexachloroethane	67-72-1	Chlorinated ethane	—	—	0.1[b]
Indeno(1,2,3-cd)pyrene	193-39-5	Polynuclear aromatic hydrocarbon	—	—	0.0013[b]
Isophorone	78-59-1	Cyclic ketone	1,000	—	1,800[b]
Malathion	121-75-5	Organophosphate	0.1	—	—
Manganese	7439-96-5	Mineral element (metal)	—	—	100
Methoxychlor	72-43-5	Organochlorine insecticide	0.03	—	0.02
Methyl Bromide	74-83-9	Halomethane	—	—	10,000
3-Methyl-4-Chloro-phenol	59-50-7	Antimicrobial pesticide (disinfectant)	—	—	2,000
2-Methyl-4,6-Dinitrophenol	534-52-1	Dinitrophenol	—	—	30
Methylene Chloride	75-09-2	Halomethane	—	—	1,000[b]
Mirex	2385-85-5	Organochloride insecticide	0.001	—	—
Nitrobenzene	98-95-3	Organic compound	1,000	—	600
Nitrosamines	N/A	A nitroso group bonded	600	—	1.24

Organic Constituent[a] (μg/L)	CAS Number	Chemical Family Group	Class C CCC 4-Day Avg	Class C CMC 1-Hour Avg	Class D 30-Day Avg
		to an amine			
Nitrosodibutylamine, N	924-16-3	Nitrosamine	—	—	0.22
Nitrosodiethylamine, N	55-18-5	Nitrosamine	—	—	1.24
Nitrosopyrrolidine, N	930-55-2	Nitrosamine	—	—	34[b]
N-Nitrosodimethylamine	62-75-9	Nitrosamine	—	—	3.0[b]
N-Nitrosodi-n-Propylamine	621-64-7	Nitrosamine	—	—	0.51[b]
N-Nitrosodiphenylamine	86-30-6	Nitrosamine	—	—	6.0[b]
Nonylphenol	84852-15-3	Alkyl-phenols	6.6	28	—
Parathion	56-38-2	Organophosphate	0.013	0.065	—
Pentachlorobenzene	608-93-5	Chlorinated benzene	—	—	0.1
Pentachlorophenol	87-86-5	Chlorinated phenol	See Note c	See Note c	0.04[b]
Phenol	108-95-2	Phenol	—	—	300,000
Polychlorinated Biphenyls (PCBs)	N/A	Organochlorine	0.014[d]	—	0.000064[d]
p,p'-Dichlorodiphenyldichloroethane (DDD)	72-54-8	Organochloride	0.001	1.1	0.00012[b]
p,p'-Dichlorodiphenyldichloroethylene (DDE)	72-55-9	Organochloride	0.001	1.1	0.000018[b]
p,p'-Dichlorodiphenyltrichloroethane (DDT)	50-29-3	Organochloride	0.001	1.1	0.000030[b]
Pyrene	129-00-0	Polynuclear aromatic hydrocarbon	—	—	30
2,3,7,8-TCDD (Dioxin)	1746-01-6	Polychlorinated dibenzodioxins	—	—	0.0000000051[b]
1,2,4,5-Tetrachlorobenzene	95-94-3	Chlorinated benzene	—	—	0.03
1,1,2,2-Tetrachloroethane	79-34-5	Chlorinated ethane	—	—	3[b]
Tetrachloroethylene	127-18-4	Chlorinated hydrocarbons	800	—	29[b]
Toluene	108-88-3	Aromatic hydrocarbon	600	—	520
Toxaphene	8001-35-2	Organophosphate insecticide	0.0002	0.73	0.00071[b]

Organic Constituent[a] (μg/L)	CAS Number	Chemical Family Group	Class C CCC 4-Day Avg	Class C CMC 1-Hour Avg	Class D 30-Day Avg
Trans-1,2-Dichloroethylene	156-60-5	Dichloroethylene	—	—	4,000
Tributyltin (TBT)	688-73-3	Organotin	0.072	0.46	—
1,2,4-Trichlorobenzene	120-82-1	Chlorinated benzene	—	—	0.076
1,1,1-Trichloroethane	71-55-6	Chlorinated ethane	—	—	200,000
1,1,2-Trichloroethane	79-00-5	Chlorinated ethane	—	—	8.9[b]
Trichloroethylene	79-01-6	Halocarbon	1,000	—	7[b]
2,4,5-Trichlorophenol	95-95-4	Chlorinated phenol	—	—	600
2,4,6-Trichlorophenol	88-06-2	Chlorinated phenol	—	—	2.8[b]
Vinyl Chloride	75-01-4	Organochloride	—	—	1.6[b]

Notes:

[a] For constituents with blank numeric criteria, EPA has not calculated standards at this time. However, permit authorities will address these constituents in NPDES permit actions using the narrative criteria for toxics.

[b] The criteria is based on carcinogenicity of 10^{-6} risk level.

[c] The formulas for calculating the concentrations of substances indicated above are as follows:

[I] The numerical CCC for pentachlorophenol in μg/L shall be given by:

$$e^{(1.005(pH) - 5.134)}$$

[I.A] The numerical CMC for pentachlorophenol in μg/L shall be given by:

$$e^{(1.005(pH) - 4.869)}$$

[d] The polychlorinated biphenyls (PCB) criterion applies to total PCBs (*e.g.*, the sum of all congener, isomer, homolog, or Aroclor analyses.)

Section 1199, DEFINITIONS, is amended to read as follows:

1199 DEFINITIONS

1199.1 When used in this chapter, the following terms shall have the meanings ascribed:

Acute toxic – the concentration of a substance that is lethal to fifty percent (50%) of the test organisms within ninety-six (96) hours, also referred to as the LC_{50}.

Ambient – those environmental conditions existing before or upstream of a source or incidence of pollution.

Anadromous fish – fish that spend most of their lives in saltwater but migrate into freshwater tributaries to spawn.

Aquatic life – all animal and plant life including, but not limited to, rooted underwater grasses found in District waters.

Background water quality – the levels of chemical, physical, biological, and radiological constituents or parameters in the water upgradient of a facility, practice, or activity and which have not been affected by that facility, practice, or activity.

Best management practices (BMPs) – schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the waters of the District. BMPs also include practices found to be the most effective and practical means of preventing or reducing point and nonpoint source pollution to levels that are compatible with water quality goals.

Contamination – an impairment of water quality by biological, chemical, physical, or radiological materials which lowers the water quality to a degree that creates a potential hazard to the environment or public health or interferes with a designated use.

Criteria – any of the group of physical, chemical, biological, and radiological water quality parameters and the associated numerical concentrations or levels that compose the numerical standards of the water quality standards and that define a component of the quality of the water needed for a designated use.

CCC or Criterion Continuous Concentration – the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (four (4) day average) without deleterious effects at a frequency that does not exceed more than once every three (3) years.

CMC or Criterion Maximum Concentration – the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time (one (1) hour average) without deleterious effects at a frequency that does not exceed more than once every three (3) years.

Consumption of fish and shellfish – the human ingestion of fish and shellfish, which is not chemically contaminated at a level that will cause a significant adverse health impact, caught from the District's waters.

Current use – the use that is generally and usually attained based upon the water quality in the waterbody.

Department – the Department of Energy and Environment, or any successor agency.

Designated use – the use specified for the waterbody in these water quality standards whether or not they are being attained.

Director – the Director of the Department, or his or her designee.

District waters – the waters of the District of Columbia.

e – base e exponential function.

Early warning value – a concentration that is a percentage of, or a practical quantitation limit for, a groundwater quality criterion or enforcement standard.

EPA – United States Environmental Protection Agency.

Enforcement standard – the value assigned to a contaminant for the purpose of regulating an activity, which may be the same as the criterion for that contaminant.

Existing use – the use actually attained in the waterbody on or after November 28, 1975.

Federal Clean Water Act – the Federal Water Pollution Control Act Amendments of 1972, approved October 18, 1972 (86 Stat. 816; 33 U.S.C. §§ 1251 *et seq.*), as amended.

Geometric mean (GM) – the n^{th} root of the product of n numbers.

Groundwater – underground water, excluding water in pipes, tanks, and other containers created or set up by people.

Harmonic mean flow – the number of daily flow measurements divided by the sum of the reciprocals of the flows. It is the reciprocal of the mean of the reciprocals.

High quality waters – waters of a quality that is better than needed to protect fishable and swimmable streams.

Landfill – a disposal facility or part of a facility at which solid waste is permanently placed in or on land and which is not a land spreading facility.

Land spreading disposal facility – a facility that applies sludge or other solid wastes onto the land or incorporates solid waste in the soil surface at greater than vegetative utilization and soil conditioners/immobilization rates.

LC_{50} or lethal concentration – the numerical limit or concentration of a test material mixed in water that is lethal to fifty percent (50%) of the aquatic organisms exposed to the test material for a period of ninety-six (96) hours.

Load or loading – an amount of matter or thermal energy that is introduced into a receiving water; to introduce matter or thermal energy into a receiving water. Loading may be either man-caused (pollutant loading) or natural (natural background loading).

Mixing zone – a limited area or a volume of water where initial dilution of a discharge takes place and where numerical water quality criteria may be exceeded but acute toxic conditions are prevented from occurring.

Narrative criteria – a condition that should not be attained in a specific medium to maintain a given designated use and that is generally expressed in a "free from" format.

Navigation – the designated use for certain District waters. This designation applies to waters that are subject to the ebb and flow of the tides, or waters that are presently used, may have been used, or may be used for shipping, travel, and transportation of interstate or foreign commerce by vessel.

Nonpoint source – any source from which pollutants are or may be discharged other than a point source.

Nontidal waters – waters in the streams not subject to regular and periodic tidal action.

Numerical criteria – the maximum level of a contaminant, the minimum level of a constituent, or the acceptable range of a parameter in water to maintain a given designated use.

Permit or permitted – a written authorization issued or certified by the Director under pertinent laws and regulations for an activity, facility, or entity to discharge, treat, store, or dispose of materials or wastes.

Point of compliance – the point or points that must not exceeded to comply with a water quality enforcement standard or criterion.

Point source – any discrete source of quantifiable pollutants, including a municipal treatment facility discharge, residential, commercial or industrial waste discharge, a combined sewer overflow; or any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation from which contaminants are or may be discharged.

Pollution – the man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.

Pollutant – any substance that may alter or interfere with the restoration or maintenance of the chemical, physical, radiological, or biological integrity of the waters of the District, including dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, hazardous wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, oil, gasoline and related petroleum products, and industrial, municipal, and agricultural wastes.

Practical quantitation limit – the lowest concentration of a substance that generally can be determined by qualified laboratories within specified limits of precision and accuracy under routine laboratory operating conditions in the matrix of concern.

Primary contact recreation – those water contact sports or activities that result in frequent whole body immersion or involve significant risks of ingestion of the water (Class A).

Responsible party – any person who has caused or is causing pollution or has created or is creating a condition from which pollution is likely to occur.

Secondary contact recreation – those water contact sports or activities that seldom result in whole body immersion or do not involve significant risks of ingestion of the water (Class B).

Semi-anadromous fish – fish that spend most of their lives in tidally influenced low to medium salinity waters but migrate to freshwater tributaries to spawn.

Short-term degradation – the period during which the waterbody may be degraded based on the nature of the pollutant and the degree of its environmental or human health impact, as determined by the Director on a case-by-case basis.

Solid waste – all putrescible and non-putrescible solid and semisolid wastes, including garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities. This term also includes all liquid, solid, and semisolid materials that are not the primary products of public, private, industrial or commercial mining, and agricultural operations.

Standards – those regulations, in the form of numerical, narrative, or enforcement standards, that specify a level of quality of the waters of the District necessary to sustain the designated uses.

Statistical threshold value (STV) – the statistical threshold value is based on the water quality distribution observed during EPA's epidemiological studies. STV approximates the ninetieth (90^{th}) percentile of the water quality distribution and is intended to be a value that should not be exceeded by more than 10 percent of the samples used to calculate the geometric mean.

Surface impoundment – a facility or part of a facility that is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and that is designed to hold an accumulation of liquids or sludge.

Surface waters – all rivers, lakes, ponds, wetlands, inland waters, streams, and other water and water courses within the jurisdiction of the District of Columbia.

Tidally influenced waters – surface waters within the Potomac River, the Anacostia River, and all embayments and tributaries to these rivers that are under the influence of tidal exchange.

Toxic substance – any substance or combination of substances that after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions

(including malfunctions in reproduction), or physical deformities in the organism or its offspring**.**

Trend analysis – a statistical methodology used to detect net changes or trends in contaminant levels over time.

Water Effect Ratio or (WER) – the ratio of the site water LC_{50} value to the laboratory water LC_{50} value.

Waters of the District or_District waters – flowing and still bodies of water, whether artificial or natural, whether underground or on land, so long as in the District of Columbia, but excluding water on private property prevented from reaching underground or land watercourses, and also excluding water in closed collection or distribution systems.

Wetland – a marsh, swamp, bog, or other area periodically inundated by tides or having saturated soil conditions for prolonged periods of time and capable of supporting aquatic vegetation.

Wildlife – all animal life whether indigenous or migratory regardless of life stage including, but not limited to, birds, anadromous and semi-anadromous fish, shellfish, and mammals including sensitive species that are found in or use the District waters.

1199.2 When used in this chapter, the following abbreviations shall have the meaning ascribed:

BMPs	best management practices
ºC	degrees centigrade or Celsius
$CaCO_3$	calcium carbonate
CCC	criterion continuous concentration
CMC	criterion maximum concentration
cfu	colony forming units
CF	conversion factor
DOEE	Department of Energy and Environment
e	base e exponential function
E. coli	*Escherichia coli*
EPA	United States Environmental Protection Agency
GM	geometric mean
IRIS	EPA's Integrated Risk Information System database
L	liter
LC_{50}	lethal concentration
ln	natural logarithm
m	meter
mg/L	milligrams per liter
mg TAN/L	milligrams of total ammonia nitrogen per liter

mL	milliliter
μg/L	microgram per liter
NPDES	National Pollutant Discharge Elimination System
NTU	Nephelometric turbidity units
PCBs	polychlorinated biphenyls
pH	hydrogen ion concentration
q1*	carcinogenic potency slope factor
STV	statistical threshold value
SWDC	Special Waters of the District of Columbia
TAN	total ammonia nitrogen
WER	Water-Effect Ratio
WQS	water quality standards

The proposed regulations are available for viewing at https://doee.dc.gov/service/water-quality-regulations. To pick up a copy of these proposed regulations at 1200 First Street N.E., 5th Floor, Washington, D.C. 20002, call Rebecca Diehl at (202) 535-2648 and mention this Notice by name. All persons desiring to comment on the proposed regulations should file comments in writing not later than sixty (60) days after the publication of this notice in the *D.C. Register*.

Comments on the proposed rule and the scope and approach to the required Water Quality Criteria Impact Analysis should identify the commenter and be clearly marked "DOEE Water Quality Standards, Proposed Rule Comments." Comments may be (1) mailed or hand-delivered to DOEE, Water Quality Division, 1200 First Street NE, 5th Floor, Washington, D.C. 20002, Attention: DOEE Water Quality Standards, or (2) sent by e-mail to WQS@dc.gov, with the subject indicated as "DOEE Water Quality Standards Proposed Rule Comments."

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF SECOND PROPOSED RULEMAKING

RM27-2017-01, IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO THE RULES GOVERNING LOCAL EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR THE DISTRICT,

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice pursuant to Sections 34-802, 2-505, and 34-401(a) of the District of Columbia Code[1] of its intent to amend Chapter 27 (Regulation of Telecommunications Service Providers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"), in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. The proposed amendments require telecommunications service providers reporting telecommunications service outages to identify the most specific location of the service outage and the geographic area affected by the service outage that the telecommunications service provider has available when the initial report is filed and the actual location of the service outage in the telecommunications service provider's network and the geographic area affected in the final report. A previous NOPR seeking to amend these rules was published on January 20, 2017.[2]

Chapter 27, REGULATION OF TELECOMMUNICATIONS SERVICE PROVIDERS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 2740, REPORTING REQUIREMENTS FOR SERVICE OUTAGES AND INCIDENTS RESULTING IN PERSONAL INJURY OR DEATH, is amended as follows:

2740.4 Each telephone or email communication rendered by the telecommunications service provider subsequent to a service outage shall, at a minimum, state clearly the following information:

(a) The date and time the telecommunications service provider determines that the service outage has occurred;

(b) The most specific location in the telecommunications service provider's network of the service outage(s) that is available when the report is filed;

(c) The geographic area affected by the outage, including street names and neighborhoods, if applicable;

[1] D.C. Official Code § 34-802 (2012 Repl.); D.C. Official Code § 2-505 (2016 Repl.), D.C. Official Code § 34-2002(g) and 34-2002(n) (2016 Supp.).

[2] 64 DCR 548 (January 20, 2017).

(d) The estimated total number of customers out of service;

(e) A preliminary assessment as to the cause of the service outage(s); and

(f) The estimated repair and/or restoration time.

2740.11 The telecommunications service provider shall file a written report concerning all service outages with the Public Service Commission and the Office of People's Counsel within five (5) days following the end of a service outage. Each written report shall, at a minimum, state clearly the following information:

(a) A description of the service outage(s) and/or incident(s) and information as to the cause of the event(s);

(b) The actual location of the outage(s) in the telecommunications service provider's network;

(c) The geographic area affected by the outage, including street names and neighborhoods, if applicable;

(d) The actual repair and restoration times of the service outage(s) and/or incident(s);

(e) A description of the restoration effort;

(f) The total number of customers affected by the service outage;

(g) A self-assessment of the telecommunications service provider's restoration efforts in the District of Columbia; and

(h) A description of the steps that the telecommunications service providers will undertake to prevent such outages in the future or improve repair times and processes.

3. Any person interested in commenting on the subject matter of this proposed rulemaking must submit comments and reply comments in writing no later than thirty (30) days and forty-five (45) days, respectively, from the date of publication of this Notice in the *D.C. Register*. Comments and reply comments are to be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington D.C., 20005 or psc-commissionsecretary@dc.gov. After the comment period expires, the Commission will take final rulemaking action. Persons with questions concerning this rulemaking should call 202-626-5150.

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

ERRATA NOTICE

The Administrator of the Office of Documents and Administrative Issuances (ODAI), pursuant to the authority set forth in Section 309 of the District of Columbia Administrative Procedure Act, approved October 21, 1968, as amended (82 Stat. 1203; D.C. Official Code § 2-559 (2016 Repl.)), hereby gives notice of a correction to the Notice of Emergency and Proposed Rulemaking issued by the Department of For-Hire Vehicles and published in the *D.C. Register* on September 1, 2017 at 64 DCR 008696. The emergency rulemaking became effective upon adoption on August 28, 2017 and expires on December 26, 2017 (120 days).

The emergency and proposed rulemaking amended, among other chapters, Chapter 6 (Taxicab Parts and Equipment) of Title 31 (Taxicabs and Public Vehicles For Hire) of the District of Columbia Municipal Regulations (DCMR). This errata notice removes a contradictory sentence in Section 602 regarding the transition from Modern Taximeter Systems to Digital Taxicab Solutions.

The corrections to the emergency and proposed rulemaking are made below (additions are shown in **boldface** and deletions are shown in ~~strikethrough~~ text):

Chapter 6, TAXICAB PARTS AND EQUIPMENT, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:

Section 602, TAXIMETERS AND DIGITAL TAXI SOLUTIONS, is amended as follows:

Subsection 602.1 is amended to read as follows:

602.1 Beginning September 13, 2016~~:~~**,** ~~(a)~~ ~~N~~**n**o legacy (non-digital) taximeters shall be approved by the Department**.**~~; and~~

~~(b) No person shall participate in dispatching, operating a taxicab, or otherwise providing taxicab service in the District if the vehicle is not equipped with a DTS unit provided by an approved DTS.~~

All persons wishing to file comments on the proposed rulemaking action should submit written comments via e-mail to dfhv@dc.gov or by mail to the Department of For-Hire Vehicles, 2235 Shannon Place, S.E., Suite 3001, Washington, D.C. 20020, no later than forty-five (45) days after the publication of this notice in the *D.C. Register*. Copies of this rulemaking can be obtained at www.dcregs.dc.gov or by contacting the Department of For-Hire Vehicles, 2235 Shannon Place, S.E., Suite 3001, Washington, D.C. 20020.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-202
August 31, 2017

SUBJECT: Appointments — Commission on Latino Community Development

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with sections 401 and 402 of the District of Columbia Latino Community Development Act, effective September 29, 1976, D.C. Law 1-86, D.C. Code §§ 2-1321, 2-1322 (2016 Repl.), it is hereby **ORDERED** that:

1. The following persons are appointed as public members of the Commission on Latino Community Development ("**Commission**") for terms ending July 26, 2020:

   a. **YURY AMAYA,** replacing Lily Najera.

   b. **JESSICA CAMACHO,** replacing Gunther Sanabria.

2. The following persons are appointed as public members of the Commission for unexpired terms ending September 11, 2019:

   a. **OMAYRA MARTINEZ,** replacing Felix Sanchez.

   b. **ALIDA SANCHEZ,** replacing Catalina Talero.

3. **MINOZKA KING SILBER,** is appointed as a public member of the Commission, replacing Yefferson Asprilla, for a term to end July 26, 2019:

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

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-203
September 5, 2017

SUBJECT: Amendment: Establishment of Medical Marijuana Advisory Committee Pursuant to the Legalization of Marijuana for Medical Treatment Initiative of 1999

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2016 Repl.), and section 10 of the Legalization of Marijuana for Medical Treatment Initiative of 1999 ("**Act**"), effective July 27, 2010, D.C. Law 18-210; D.C. Official Code § 7-1671.09 (2012 Repl. and 2017 Supp.), it is hereby **ORDERED** that:

I. AMENDMENT OF MAYOR'S ORDER 2013-201

Section V(a) of Mayor's Order 2013-201, dated October 28, 2013, is amended by striking the sentence:

"The Intergovernmental Operations Subcommittee shall consist of four (4) members, who shall be as follows: The Director of the Department of Health, or a subordinate delegee, the Director of the Department of Consumer and Regulatory Affairs, or a subordinate delegee, the Chief of the Metropolitan Police Department, or a subordinate delegee, and the City Administrator, or a subordinate delegee."

and inserting in its place the sentence:

"The Intergovernmental Operations Subcommittee shall consist of six (6) members, who shall be as follows: the Director of the Department of Health, or a subordinate delegee, the Director of the Department of Consumer and Regulatory Affairs, or a subordinate delegee, the Chief of the Metropolitan Police Department, or a subordinate delegee, the Director of the Department of Energy and Environment, or a subordinate delegee, the City Administrator, or a subordinate delegee, and the Mayor's General Counsel or a subordinate delegee.".

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

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-204
September 6, 2017

SUBJECT: Appointment – Interim Director, Office of Budget and Finance

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), it is hereby **ORDERED** that:

1. **JENNIFER REED** is appointed Interim Director, Office of Budget and Finance, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2015-32, dated January 8, 2015.

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

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-205
September 6, 2017

SUBJECT: Appointment – Director, Department of General Services

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), pursuant to section 1024 of the Department of General Services Establishment Act of 2011, effective September 14, 2011, D.C. Law 19-21; D.C. Official Code § 10-551.03 (2013 Repl.), 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 (2016 Repl.), and the Director of the Department of General Services Greer Gillis Confirmation Resolution of 2016, effective December 6, 2016, R21-0672, it is hereby **ORDERED** that:

1. **GREER GILLIS** is appointed Director, Department of General Services, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2016-108, dated August 15, 2016.

3. **EFFECTIVE DATE**: This Order shall be effective *nunc pro tunc* to December 6, 2016.

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-206
September 8, 2017

SUBJECT: Delegation of Rulemaking Authority – Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(6) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6) (2016 Repl.), and section 7c of the Department of Insurance and Securities Regulation Establishment Act of 1996 (**"Act"**), as added by section 2 of the Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016, effective February 18, 2017, D.C. Law 21-214, D.C. Official Code § 31-106.03 (2017 Supp.), it is hereby **ORDERED** that:

1. The Commissioner of the Department of Insurance, Securities, and Banking is delegated the authority of the Mayor to issue rules pursuant to section 7c of the Act (D.C. Official Code § 31-106.03).

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

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-207
September 8, 2017

SUBJECT: Appointments — Board of Medicine

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and pursuant to section 203 of the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986, D.C. Law 6-99; D.C. Official Code § 3-1202.03 (2012 Repl. and 2017 Supp.), it is hereby **ORDERED** that:

1. **ANDREA ANDERSON** is appointed as the Executive Director of the Board of Medicine ("**Board**"), replacing Janis Orlowski, serving at the pleasure of the Mayor.

2. **PREETHA IYENGAR** is appointed as the Department of Health designee to the Board, serving at the pleasure of the Mayor.

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

MURIEL BOWSER
MAYOR

ATTEST: _____
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-208
September 8, 2017

SUBJECT: Amendment and Appointments — Adult Career Pathways Task Force

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), pursuant to section 2121 of the Adult Literacy Task Force Act of 2014, effective February 26, 2015, D.C. Law 20-155, D.C. Official Code § 32-1661 (2012 Repl. and 2017 Supp.), and in accordance with Mayor's Order 2014-232, dated October 9, 2014, it is hereby **ORDERED** that:

1. Section IV of Mayor's Order 2014-232, dated October 9, 2014, is amended as follows:

    a. The lead-in text is amended to read as follows:

    "The Task Force shall be convened by the Workforce Investment Council, and shall consist of the following seventeen (17) members:"

    b. Subsection K is amended as follows:

    "K(2) A representative of a District school engaged in the direct provision of a basic skills program;

    "K(3) A representative of a District job training provider; and

    "K(4) Three representatives of the District business community in the high-demand industry sectors: business administration; information technology; construction; healthcare; hospitality; infrastructure; law; or security."

2. The following persons are appointed to the Adult Career Pathways Task Force (hereafter referred to as "**Task Force**"), to serve at the pleasure of the Mayor:

    a. **DIANE PABICH**, as the designee of the Chair of the Workforce Investment Council, replacing Odie Donald.

    b. **ODIE DONALD**, the Director of the Department of Employment Services, replacing Deborah Carroll.

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

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-209
September 8, 2017

SUBJECT: Appointment, Reappointments, and Amendment— District of Columbia Workforce Investment Council

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with Mayor's Order 2016-086, dated June 2, 2016, it is hereby **ORDERED** that:

1. **ODIE DONALD** is appointed as a member of the Workforce Investment Council ("**Council**") as the Director of Department of Employment Services to serve at the pleasure of the Mayor.

2. The following persons are reappointed as members of the Council for terms to end June 23, 2020:

   a. **ROBIN LYNN ANDERSON,** as a representative of the retail sector.

   b. **STEPHEN COURTIEN,** as a representative of a community-based organization that has demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment, including organizations that serve veterans or that provide or support competitive, integrated employment for individuals with disabilities.

   c. **LIZ DEBARROS,** as a representative of the business organization sector.

   d. **KOREY GRAY,** as a representative of the energy and utility sector.

   e. **BENTON MURPHY,** as a representative of a community-based organization that has demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment, including organizations that serve veterans or that provide or support competitive, integrated employment for individuals with disabilities.

   f. **ANDY SHALLAL,** as a representative of the hospitality sector.

g. **STACY SMITH,** as a representative of the hospitality sector.

3. **CARLOS JIMENEZ** is appointed to the Council as a representative of District labor organizations nominated by District labor federations member, filling a vacant seat, for a term to end June 23, 2017, and reappointed for a term to end June 23, 2020.

4. Section III.A.2 of Mayor's Order 2016-086, dated June 2, 2016 is amended by striking the phrase "One (1) member" and inserting the phrase "Two (2) members" in its place.

5. **EFFECTIVE DATE:** Sections 1, 2, and 3 of this order shall be effective *nunc pro tunc* to July 24, 2017. Section 4 of this order shall be effective *nunc pro tunc* to December 15, 2016.

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-210
September 11, 2017

SUBJECT: Designation of Special Events Area

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code§ 1-204.22(11) (2016 Repl.), and pursuant to 19 DCMR § 1301.8, it is hereby **ORDERED** that:

1. The area commonly known as the District Wharf, in its entirety, and certain adjacent streets and properties, as more particularly described below, are hereby designated as a Special Events Area to which the provisions of 19 DCMR § 1301 shall not apply:

   All of the parcels now or previously designated as the following: all of Lot 54 in Square 390; and all of Lots 804, 805, and 806 in Square 391; and all of Lot 810 in Square 471W; and all of Lot 827 in Square 472; and all of Lots 83, 84, 88, 89, 814 815, 819, 820, 822, 823, 824, 825, 826, 827, 828, 831, 834, 837, 839, 840, 841, 842, 843, 844, 845, 846, 847, 849, 850, 851, 881 in Square 473; and all of Lots 883, 884, and 885 in Square 503; and all of Parcels 255/23, and Parcel 255/24; and the portions of Water Street, SW, 9th Street, SW, 7th Street, SW, L Street, SW, M Place, SW, and N Street, SW, that abut the foregoing lots and parcels; and all appurtenant riparian areas lying waterward of Square 473 and Parcel 255/24.

2. Without limiting the generality of Paragraph 1, it is noted that the area described above is expected to be one of the most active in the District and will be subject to weekly (and potentially daily) waterfront activities that could lead to street closures and late night/early morning operations particularly on weekends and evenings, for the purposes of hosting public and private events and programs including, but not limited to, concerts, exercise classes, other classes, dances, farmers' markets, art shows, mini golf, ice skating, tennis, maritime events, boat shows, land and water parades, block parties, and other sporting, cultural, charitable, entertainment, and community celebrations, events, and programs.

3. The above-designated Special Events Area shall be operated and overseen by the Office of the Deputy Mayor for Planning and Economic Development or any entity designated by the Office of the Deputy Mayor for Planning and Economic Development.

4. Any prior designation of all or a portion of the above-designated area as a Special Events Area, and any prior grant of authority to operate, manage, or oversee such area, is rescinded.

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

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-211
September 11, 2017

SUBJECT: Appointment – Director, Office of Veterans Affairs

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), in accordance with section 703 of the Office of Veterans Affairs Establishment Act of 2001, effective October 3, 2001, D.C. Law 14-28; D.C. Official Code § 49-1002 (2013 Repl.), 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 (2016 Repl.), and pursuant to the Director of the Office of Veterans Affairs Ely S. Ross Confirmation Resolution of 2016, effective December 6, 2016, R21-0673, it is hereby **ORDERED** that:

1. **ELY ROSS** is appointed Director, Office of Veterans Affairs, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2016-154, dated October 12, 2016.

3. **EFFECTIVE DATE**: This Order shall be effective *nunc pro tunc* to December 6, 2016.

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, SEPTEMBER 20, 2017
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
James Short, Jake Perry, Donald Isaac, Sr.

Protest Hearing (Status) **9:30 AM**
Case # 17-PRO-00045; N&D Entertainment, LLC, t/a Phoenix Restaurant Lounge, 2434 18th Street NW, License #107011, Retailer CR, ANC 1C
Application to Renew the License

Show Cause Hearing (Status) **9:30 AM**
Case # 17-251-00093; Hache Lounge, LLC, t/a Hache Lounge, 441 Kennedy Street NW, License #90274, Retailer CT, ANC 4D
Operating after Hours

Show Cause Hearing (Status) **9:30 AM**
Case # 17-CMP-00288; Hache Lounge, LLC, t/a Hache Lounge, 441 Kennedy Street NW, License #90274, Retailer CT, ANC 4D
Operating after Hours

Show Cause Hearing (Status) **9:30 AM**
Case # 16-CMP-00842; Addis Ethiopian Restaurant, LLC, t/a Addis Ethiopian Restaurant, 707 H Street NE, License #97534, Retailer CR, ANC 6C
Failed to Provide Invoices for Purchased Alcoholic Beverages

Show Cause Hearing (Status) **9:30 AM**
Case # 16-AUD-00086; Skenco, Inc., t/a Zorba's Café, 1612 20th Street NW License #7428, Retailer DR, ANC 2B
Failed to Maintain on Premises Three Years of Adequate Books and Records Showing All Sales

Show Cause Hearing (Status) **9:30 AM**
Case # 17-CC-00047; Foggy Bottom Grocery, LLC, t/a FoBoGro, 2140 F Street NW, License #82431, Retailer B, ANC 2A

Board's Calendar
September 20, 2017
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

Show Cause Hearing (Status) **9:30 AM**
Case # 17-CMP-00219; Yohannes A. Woldemichael, t/a Capitol Fine Wine and Spirits, 415 H Street NE, License #82981, Retailer A, ANC 6C
No ABC Manager on Duty, Violation of Settlement Agreement

Show Cause Hearing* **10:00 AM**
Case # 17-CC-00017; Minnesota Store, LLC, t/a Minnesota Store, 3728 Minnesota Ave NE, License #95245, Retailer B, ANC 7F
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

Show Cause Hearing* **11:00 AM**
Case # 17-CC-00027; Capitol Market, LLC, t/a Capitol Market, 2501 North Capitol Street NE, License #91021, Retailer B, ANC 5E
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

Public Hearing* **11:30 AM**
East Dupont Circle Moratorium

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

Protest Hearing* **1:30 PM**
Case # 16-PRO-00114; 1624 U Street, Inc., t/a Chi-Cha Lounge, 1624 U Street NW, License #26519, Retailer CT, ANC 2B
Application for a New License

Protest Hearing* **1:30 PM**
Case # 17-PRO-00039; EMB International, LLC, t/a Café Georgetown, 3141 N Street NW, License #106108, Retailer DR, ANC 2E
Application for a New License

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, SEPTEMBER 20, 2017
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On Wednesday, September 20, 2017 at 4:00 pm., the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed "to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations."

1. Case# 17-CC-00093, Café Mozart, 1331 H Street N.W., Retailer CR, License # ABRA-003664

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2. Case# 17-CC-00095, Brasserie Beck, 1101 K Street N.W., Retailer CR, License # ABRA-076383

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3. Case# 17-CC-00096, Café Bonaparte, 1522 Wisconsin Avenue N.W., Retailer CR, License # ABRA-071007

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4. Case# 17-CC-00104, Yang's Market, 138 U Street N.E., Retailer B, License # ABRA-103996

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5. Case# 17- CC-00087, El Rinconcito Café, 1129 11th Street N.W., Retailer CR, License # ABRA-024338

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6. Case# 17- CMP-00467 (M), ABC Manager, Douglas Bowman, License # ABRA-107127

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7. Case# 17-CMP-00517, Kiflu's Wine & Spirits, 1201 5th Street N.W., Retailer A, License # ABRA-092419

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8. Case# 17-AUD-00049, New District Kitchen, 2606 Connecticut Avenue N.W., Retailer CR, License # ABRA-087574

9. Case# 17-AUD-00050, Guapo's Restaurant, 4515 Wisconsin Avenue N.W., Retailer CR, License # ABRA-016332

10. Case# 17-AUD-00052, Paolo's, 1303 Wisconsin Avenue N.W., Retailer CR, License # ABRA-072357

11. Case# 17-CC-00094, The Commodore, 1100 P Street N.W., Retailer CT, License # ABRA-073443

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, SEPTEMBER 20, 2017 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Request to remove license from Safekeeping in order to reopen on September 30, 2017. ANC 4C. SMD 4C08. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Davis Market***, 3819 Georgia Avenue NW, Retailer B, License No. 060094.

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2. Review Request to Extend Safekeeping of License – Fourth Request. Original Safekeeping Date: 1/7/2015. ANC 6A. SMD 6A01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Family Liquors,*** 710 H Street NE, Retailer A Liquor Store, License No. 021877.

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3. Review Request to Extend Safekeeping of License – Second Request. Original Safekeeping Date: 11/9/2016. ANC 2E. SMD 2E05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Dixie Liquors,*** 3429 M Street NW, Retailer A Liquor Store, License No. 077295.

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4. Review Request for Change of Hours. ***Approved Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday 12pm to 10:30pm, Monday-Friday 11:30am to 11pm, Saturday 12pm to 11pm. ***Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday 12pm to 2am, Monday-Wednesday 11:30am to 11pm, Friday-Saturday 11am to 2am. ANC 2B. SMD 2B02. Outstanding fine/citation. No conflict with Settlement Agreement. ***Bangkok Thai Dining***, 2016 P Street NW, Retailer CR, License No. 091333.

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5. Review Application for Tasting Permit. ANC 3B. SMD 3B04**.** No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Young's Deli & Market***, 4000 Massachusetts Avenue NW, Retailer B, License No. 107577.

***In accordance with D.C. Official Code §2-547(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

BREAKTHROUGH MONTESSORI PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Design/Build Services

Breakthrough Montessori invites all interested parties to submit proposals to provide design/build services related to the interior renovation of approximately 43,000 sf. The required delivery date is July 2018. Please send an email to rfp@bhope.org to receive the full RFP. Proposals are due no later than October 6, 2017.

DC SCHOLARS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Information Technology Support Services

DC Scholars Public Charter School solicits proposals for Information Technology Support Services for December 1, 2017 – June 30, 2019. The services would cover the second half of school year 2017-18 and school year 2018-19.

The Request for Proposals (RFP) specifications, such as scope and responsibilities can be obtained on Friday, September 15, 2017 from Emily Stone via communityschools@dcscholars.org.

All questions should be in writing by e-mail. Please put "Technology RFP" in the subject heading. No phone calls regarding this RFP will be accepted.

Bids must be received by Friday, September 29, 2017 at 5:00 PM, at the email listed below. Any bids not addressing all areas as outlined in the RFP specifications will not be considered.

Submit bids electronically to: Communityschools@dcscholars.org.

E.L. HAYNES PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Bathroom Renovation Services

E.L. Haynes Public Charter School ("ELH") is seeking proposals from qualified vendors to provide bathroom renovation services for our six in-classroom pre-kindergarten and kindergarten bathrooms.

The contract will be assigned to a successful bidder who can provide the parts and service to complete these tasks.

Proposals are due via email to Kristin Yochum no later than 5:00 PM on Friday, September 29, 2017. We will notify the final vendor of selection and schedule work to be completed. The RFP with bidding requirements can be obtained by contacting:

Kristin Yochum
E.L. Haynes Public Charter School
Email: kyochum@elhaynes.org

Flooring Products and Services

E.L. Haynes Public Charter School ("ELH") is seeking proposals from qualified vendors to provide and install marmoleum and/or VCT flooring for areas in the basement, second, and third floors of our high school, located at 4501 Kansas Ave, NW.

The contract will be assigned to a successful bidder who can provide the parts and service to complete these tasks.

Proposals are due via email to Kristin Yochum no later than 5:00 PM on Friday, September 29, 2017. We will notify the final vendor of selection and schedule work to be completed. The RFP with bidding requirements can be obtained by contacting:

Kristin Yochum
E.L. Haynes Public Charter School
Email: kyochum@elhaynes.org

EAGLE ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Building Security Services

Eagle Academy Public Charter School, in accordance with Section 2204©(XV)(A) of the District of Columbia School Reform Act of 1995, hereby requests proposals to provide Building Security services at 3400 Wheeler Road, SE, DC. **One uniformed Security personnel licensed and bonded/40 hours per week or more to coordinate the security activity on campus. To contract additional Security as needed (special events, weekends)**

Submittal is Due: Monday, September 25, 2017 by 5:00 p.m.
Submittal Requirements – Please limit your submittal to less than 20 pages, and submit your submittal by the time and place specified in electronic form. No late submittals will be accepted. **Questions and submittals should be directed to the attention of jmallory@eagleacademypcs.org.**

Eagle Academy will negotiate terms and fees with the top selected firm. Eagle Academy PCS reserves the right to reject any and all bids at its sole discretion.
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BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCY

The District of Columbia Board of Elections hereby gives notice that there are vacancies in two (2) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 3D07 and 7F07

Petition Circulation Period: **Monday, September 18, 2017 thru Tuesday, October 10, 2017**
Petition Challenge Period: **Friday, October 13, 2017 thru Thursday, October 19, 2017**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

D.C. Board of Elections
441 - 4th Street, NW, Room 250N
Washington, DC 20001

For more information, the public may call **727-2525**.

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE REGISTRATION SUMMARY

As Of AUGUST 31, 2017

WARD	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	44,874	2,950	623	143	170	11,271	**60,031**
2	30,695	5,784	211	166	155	10,793	**47,804**
3	38,085	6,560	345	140	157	11,063	**56,350**
4	48,832	2,258	519	86	169	8,886	**60,750**
5	51,879	2,319	580	111	221	9,254	**64,364**
6	54,591	7,158	484	236	233	13,503	**76,205**
7	47,368	1,262	417	48	167	6,419	**55,681**
8	45,744	1,351	437	47	172	7,099	**54,850**
Totals	362,068	29,642	3,616	977	1,444	78,288	**476,035**
Percentage By Party	**76.06%**	**6.23%**	**.76%**	**.21%**	**.30%**	**16.45%**	**100.00%**

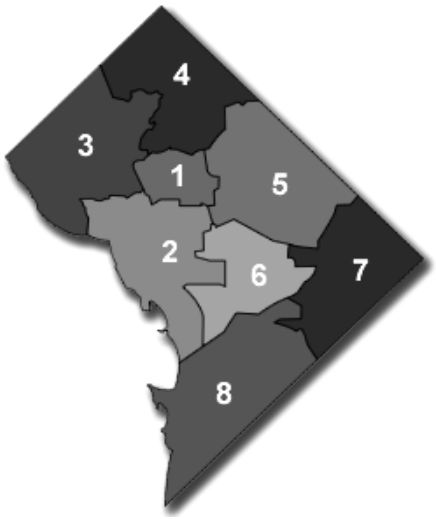
DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF

VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS

AS OF THE END OF AUGUST 31, 2017

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.dcboe.org

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 1 REGISTRATION SUMMARY

As Of AUGUST 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
20	1,407	32	8	2	5	243	**1,697**
22	3,732	390	27	15	12	960	**5,136**
23	2,895	220	44	14	11	780	**3,964**
24	2,652	257	26	13	14	791	**3,753**
25	3,800	450	46	14	12	1,097	**5,419**
35	3,574	223	51	14	8	828	**4,698**
36	4,192	244	54	6	15	1,025	**5,536**
37	3,385	160	49	14	10	807	**4,425**
38	2,879	133	47	17	13	737	**3,826**
39	4,125	203	67	7	14	915	**5,331**
40	3,939	190	83	10	18	1,008	**5,248**
41	3,549	208	62	7	17	1,012	**4,855**
42	1,829	80	31	2	11	452	**2,405**
43	1,787	72	22	3	7	365	**2,256**
137	1,129	88	6	5	3	251	**1,482**
TOTALS	**44,874**	**2,950**	**623**	**143**	**170**	**11,271**	**60,031**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 2 REGISTRATION SUMMARY

As Of AUGUST 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
2	930	178	6	9	12	553	**1,688**
3	1,658	384	16	8	11	641	**2,718**
4	1,938	490	5	11	7	758	**3,209**
5	2,086	595	13	15	10	767	**3,486**
6	2,321	849	17	17	15	1,230	**4,449**
13	1,289	237	4	2	5	420	**1,957**
14	2,939	486	25	16	10	955	**4,431**
15	3,018	413	30	16	17	881	**4,375**
16	3,432	434	26	18	16	959	**4,885**
17	4,801	629	30	21	17	1,491	**6,989**
129	2,370	411	13	12	14	892	**3,712**
141	2,390	311	13	11	13	665	**3,403**
143	1,523	367	13	10	8	581	**2,502**
TOTALS	**30,695**	**5,784**	**211**	**166**	**155**	**10,793**	**47,804**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 3 REGISTRATION SUMMARY
As Of AUGUST 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
7	1,278	402	15	3	6	571	**2,275**
8	2,429	637	30	6	8	775	**3,885**
9	1,169	501	6	9	8	486	**2,179**
10	1,872	423	19	6	13	694	**3,027**
11	3,415	909	39	30	23	1,256	**5,672**
12	485	190	0	4	4	207	**890**
26	2,882	342	19	8	8	838	**4,097**
27	2,447	247	22	9	3	574	**3,302**
28	2,514	491	39	7	10	764	**3,825**
29	1,327	240	12	8	8	415	**2,010**
30	1,285	207	11	4	6	299	**1,812**
31	2,419	308	16	6	14	568	**3,331**
32	2,711	298	23	5	11	574	**3,622**
33	2,912	299	23	4	4	677	**3,919**
34	3,755	429	37	13	8	1,119	**5,361**
50	2,169	276	16	6	8	490	**2,965**
136	840	96	6	1	3	263	**1,209**
138	2,176	265	12	11	12	493	**2,969**
TOTALS	**38,085**	**6,560**	**345**	**140**	**157**	**11,063**	**56,350**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 4 REGISTRATION SUMMARY

As Of AUGUST 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
45	2,266	70	32	5	10	380	**2,763**
46	2,829	94	31	7	13	496	**3,470**
47	3,392	145	43	10	15	766	**4,371**
48	2,814	130	26	5	7	552	**3,534**
49	903	44	15	3	6	201	**1,172**
51	3,322	521	20	8	9	626	**4,506**
52	1,237	153	9	0	4	234	**1,637**
53	1,243	72	19	1	4	248	**1,587**
54	2,346	98	27	2	5	447	**2,925**
55	2,421	75	17	1	10	425	**2,949**
56	3,100	99	34	8	13	635	**3,889**
57	2,433	72	35	6	12	470	**3,028**
58	2,271	63	19	3	5	337	**2,698**
59	2,603	88	30	7	7	420	**3,155**
60	2,156	73	24	4	10	609	**2,876**
61	1,579	51	13	0	6	282	**1,931**
62	3,156	127	22	3	5	386	**3,699**
63	3,716	128	56	1	18	655	**4,574**
64	2,351	69	21	7	6	357	**2,811**
65	2,694	86	26	5	4	360	**3,175**
Totals	**48,832**	**2,258**	**519**	**86**	**169**	**8,886**	**60,750**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 5 REGISTRATION SUMMARY
As Of AUGUST 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
19	4,377	191	59	9	15	976	**5,627**
44	2,803	239	29	8	18	646	**3,743**
66	4,489	88	45	4	15	569	**5,210**
67	2,847	101	21	4	9	407	**3,389**
68	1,903	165	20	8	5	398	**2,499**
69	2,084	69	19	1	10	283	**2,466**
70	1,447	77	25	0	4	212	**1,765**
71	2,360	71	25	5	11	326	**2,798**
72	4,297	139	37	8	25	707	**5,213**
73	1,969	93	23	6	10	362	**2,463**
74	4,595	262	63	8	22	966	**5,916**
75	3,867	215	47	16	20	826	**4,991**
76	1,591	90	20	7	7	347	**2,062**
77	2,840	119	29	4	12	492	**3,496**
78	2,924	92	45	10	10	475	**3,556**
79	2,031	72	19	3	10	351	**2,486**
135	3,057	177	39	8	12	611	**3,904**
139	2,398	59	15	2	6	300	**2,780**
TOTALS	**51,879**	**2,319**	**580**	**111**	**221**	**9,254**	**64,364**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 6 REGISTRATION SUMMARY

As Of AUGUST 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	4,484	564	44	27	15	1,211	**6,345**
18	4,823	365	45	13	19	1,096	**6,361**
21	1,161	59	8	7	1	248	**1,484**
81	4,620	377	45	12	20	935	**6,009**
82	2,593	255	36	8	8	593	**3,493**
83	5,270	734	37	26	26	1,389	**7,482**
84	1,998	402	20	6	10	546	**2,982**
85	2,686	506	16	13	9	734	**3,964**
86	2,202	257	21	10	7	455	**2,952**
87	2,709	285	17	3	16	584	**3,614**
88	2,162	291	20	6	4	508	**2,991**
89	2,577	646	19	12	9	754	**4,017**
90	1,579	248	10	7	10	470	**2,324**
91	4,044	405	37	15	20	942	**5,463**
127	4,161	321	42	21	17	872	**5,434**
128	2,432	211	28	10	11	607	**3,299**
130	789	314	6	2	3	282	**1,396**
131	2,724	726	18	25	20	852	**4,365**
142	1,577	192	15	13	8	425	**2,230**
TOTALS	**54,591**	**7,158**	**484**	**236**	**233**	**13,503**	**76,205**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 7 REGISTRATION SUMMARY
As Of AUGUST 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
80	1,434	82	18	4	3	267	**1,808**
92	1,584	33	12	1	5	223	**1,858**
93	1,570	38	18	2	5	219	**1,852**
94	1,926	56	18	0	6	255	**2,261**
95	1,655	46	12	1	2	262	**1,978**
96	2,337	66	16	1	13	332	**2,765**
97	1,387	44	14	1	6	201	**1,653**
98	1,898	40	22	2	8	250	**2,220**
99	1,491	49	18	4	8	241	**1,811**
100	2,361	46	16	2	8	278	**2,711**
101	1,580	28	13	3	5	173	**1,802**
102	2,308	53	18	0	12	282	**2,673**
103	3,434	76	38	2	9	478	**4,037**
104	3,060	80	30	1	19	427	**3,617**
105	2,394	69	20	4	9	361	**2,857**
106	2,773	55	19	1	11	372	**3,231**
107	1,737	59	13	1	8	220	**2,038**
108	1,077	28	6	0	2	128	**1,241**
109	960	39	4	0	1	95	**1,099**
110	3,716	103	22	7	10	418	**4,276**
111	2,464	63	33	3	6	377	**2,946**
113	2,186	54	20	4	7	267	**2,538**
132	2,036	55	17	4	4	293	**2,409**
TOTALS	**47,368**	**1,262**	**417**	**48**	**167**	**6,419**	**55,681**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 8 REGISTRATION SUMMARY
As Of AUGUST 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
112	2,206	62	17	1	11	317	**2,614**
114	3,474	133	35	4	21	562	**4,229**
115	2,847	66	25	5	9	604	**3,556**
116	4,115	97	42	5	14	634	**4,907**
117	2,082	49	19	2	10	337	**2,499**
118	2,746	78	34	3	11	412	**3,284**
119	2,675	107	28	1	11	447	**3,269**
120	1,871	33	15	2	2	225	**2,148**
121	3,359	77	26	3	5	458	**3,928**
122	1,791	46	22	0	9	238	**2,106**
123	2,310	159	25	10	18	383	**2,905**
124	2,599	67	21	2	7	355	**3,051**
125	4,485	102	39	2	14	689	**5,331**
126	3,836	127	45	5	17	712	**4,742**
133	1,296	41	9	0	1	171	**1,518**
134	2,195	49	25	1	6	288	**2,564**
140	1,857	58	10	1	6	267	**2,199**
TOTALS	**45,744**	**1,351**	**437**	**47**	**172**	**7,099**	**54,850**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE REGISTRATION ACTIVITY

For voter registration activity between 7/31/2017 and 8/31/2017

NEW REGISTRATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Beginning Totals	**363,388**	**29,849**	**3,628**	**971**	**1,426**	**78,453**	**477,715**
Board of Elections Over the Counter	8	0	0	0	0	9	**17**
Board of Elections by Mail	31	5	2	0	0	20	**58**
Board of Elections Online Registration	64	9	4	1	3	25	**106**
Department of Motor Vehicle	1,685	215	14	3	26	544	**2,477**
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	0	0	0	0	0	0	**0**
Dept. of Youth Rehabilitative Services	0	0	0	0	0	0	**0**
Department of Corrections	1	0	1	0	0	0	**2**
Department of Human Services	4	0	0	0	0	1	**5**
Special / Provisional	0	0	0	0	0	0	**0**
All Other Sources	91	9	0	0	2	44	**146**
+Total New Registrations	**1,874**	**238**	**21**	**4**	**31**	**643**	**2,811**

ACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Reinstated from Inactive Status	248	21	2	0	1	61	**333**
Administrative Corrections	6	2	0	0	0	2	**10**
+TOTAL ACTIVATIONS	**254**	**23**	**2**	**0**	**1**	**63**	**343**

DEACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Changed to Inactive Status	387	43	4	1	2	108	**545**
Moved Out of District (Deleted)	1	0	0	0	0	0	**1**
Felon (Deleted)	0	0	0	0	0	0	**0**
Deceased (Deleted)	650	31	7	2	1	53	**744**
Administrative Corrections	2,533	364	20	6	6	655	**3,584**
-TOTAL DEACTIVATIONS	**3,571**	**438**	**31**	**9**	**9**	**816**	**4,874**

AFFILIATION CHANGES	DEM	REP	STG	LIB	OTH	N-P	
+ Changed To Party	292	52	15	25	20	200	
- Changed From Party	-169	-82	-19	-14	-25	-255	
ENDING TOTALS	**362,068**	**29,642**	**3,616**	**977**	**1,444**	**78,288**	**476,035**

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (No. 6615-R1) to Al-Thahir Corp T/A Dial Cab., to operate one (1) an automotive paint spray booth at the facility located at 2838 Bladensburg Road NE, Washington DC 20018. The contact person for the facility is Gamal El Raida, Manager, at (202) 832-4444.

Emissions Estimate:

AQD estimates that the potential to emit volatile organic compounds (VOC) from the paint spray booth will not exceed 3.12 tons per year.

The proposed emission limits are as follows:

a. No chemical strippers containing methylene chloride (MeCl) shall be used for paint stripping at the facility. [20 DCMR 201.1]

b. The Permittee shall not use or apply to a motor vehicle, mobile equipment, or associated parts and components, an automotive coating with a VOC regulatory content calculated in accordance with the methods specified in this permit that exceeds the VOC content requirements of Table I below. [20 DCMR 718.3]

Table I. Allowable VOC Content in Automotive Coatings for Motor Vehicle and Mobile Equipment Non-Assembly Line Refinishing and Recoating

Coating Category	VOC Regulatory Limit As Applied*	
	(Pounds per gallon)	(Grams per liter)
Adhesion promoter	4.5	540
Automotive pretreatment coating	5.5	660
Automotive primer	2.1	250
Clear coating	2.1	250
Color coating, including metallic/iridescent color coating	3.5	420
Multicolor coating	5.7	680
Other automotive coating type	2.1	250
Single-stage coating, including single-stage metallic/iridescent coating	2.8	340
Temporary protective coating	0.50	60
Truck bed liner coating	1.7	200
Underbody coating	3.6	430
Uniform finish coating	4.5	540

*VOC regulatory limit as applied = weight of VOC per volume of coating (prepared to manufacturer's recommended maximum VOC content, minus water and non-VOC solvents)

c. Each cleaning solvent present at the facility shall not exceed a VOC content of twenty-five (25) grams per liter (twenty-one one-hundredths (0.21) pound per gallon), calculated in accordance with the methods specified in this permit, except for [20 DCMR 718.4]:

1. Cleaning solvent used as bug and tar remover if the VOC content of the cleaning solvent does not exceed three hundred fifty (350) grams per liter (two and nine-tenths (2.9) pounds per gallon), where usage of cleaning solvent used as bug and tar remover is limited as follows:

A. Twenty (20) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with four hundred (400) gallons or more of coating usage during the preceding twelve (12) calendar months;

B. Fifteen (15) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with one hundred fifty (150) gallons or more of coating usage during the preceding twelve (12) calendar months; or

C. Ten (10) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with less than one hundred fifty (150) gallons of coating usage during the preceding twelve (12) calendar months;

2. Cleaning solvents used to clean plastic parts just prior to coating or VOC-containing materials for the removal of wax and grease provided that non-aerosol, hand-held spray bottles are used with a maximum cleaning solvent VOC content of seven hundred eighty (780) grams per liter and the total volume of the cleaning solvent does not exceed twenty (20) gallons per consecutive twelve-month (12) period per automotive refinishing facility;

3. Aerosol cleaning solvents if one hundred sixty (160) ounces or less are used per day per automotive refinishing facility; or

4. Cleaning solvent with a VOC content no greater than three hundred fifty (350) grams per liter may be used at a volume equal to two-and-one-half percent (2.5%) of the preceding calendar year's annual coating usage up to a maximum of fifteen (15) gallons per calendar year of cleaning solvent.

d. The Permittee may not possess either of the following [20 DCMR 718.9]:

1. An automotive coating that is not in compliance with Condition (b) (relating to coating VOC content limits); and

2. A cleaning solvent that does not meet the requirements of Condition (c) (relating to cleaning solvent VOC content limits).

e. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited [20 DCMR 903.1]

f. Visible emissions shall not be emitted into the outdoor atmosphere from the paint booth. [20 DCMR 201.1, 20 DCMR 606, and 20 DCMR 903.1]

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours, P.E.
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
stephen.ours@dc.gov

No comments or hearing requests submitted after October 16, 2017 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue permit No. 7126 to the District of Columbia Water and Sewer Authority (DC Water) to construct and operate one (1) 250 kWe MTU emergency generator set as listed below, to be located at the Blue Plains wastewater treatment plant (WWTP), 5000 Overlook Avenue SW, Washington DC 20032. The contact person for the facility is Meena Gowda, Principal Counsel, at (202) 787-2628.

The emergency generator set below is to be permitted:

Equipment Location	Address	Generator (Engine) Size	Permit No.
Blue Plains Wastewater Treatment Plant (WWTP), South of TDPS	5000 Overlook Ave. SW Washington DC 20032	250 kWe (418 hp)	7126

The proposed emission limits are as follows:

a. Emissions from the generator set shall not exceed those found in the following table as measured using the procedures set forth in 40 CFR 89, Subpart E for NMHC, NOx, and CO and 40 CFR 89.112(c) for PM [40 CFR 60.4205(b), 40 CFR 60.4202(a), and 40 CFR 89.112(a)-(c)]:

Pollutant Emission Limits (g/kW-hr)		
NMHC+NOx	CO	PM
4.0	3.5	0.20

b. Visible emissions shall not be emitted into the outdoor atmosphere from this generator set, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].

Note that 20 DCMR 606 is subject to an EPA-issued call for a State Implementation Plan (SIP) revision (known as a "SIP call") requiring the District to revise 20 DCMR 606. See "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction", 80 Fed. Reg. 33840 (June 12, 2015). It is likely that this federal action will result in changes to the requirements of 20 DCMR 606. Any such changes, once finalized in the DCMR, will supersede the language of Condition II(b) as stated above.

c. In addition to Condition II(b), exhaust opacity, measured and calculated as set forth in 40 CFR 86, Subpart I, shall not exceed [40 CFR 60.4205(b), 40 CFR 60.4202(a), and 40 CFR 89.113]:

1. 20 percent during the acceleration mode;

2. 15 percent during the lugging mode;

3. 40 percent during the peaks in either the acceleration or lugging modes. *Note that this condition is streamlined with the requirements of 20 DCMR 606.1.*

d. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated maximum emissions from the emergency generator set are as follows:

Pollutant	**Maximum Annual Emissions (tons/yr)**
Carbon Monoxide (CO)	0.10
Oxides of Nitrogen (NO_x)	0.79
Total Particulate Matter (PM Total)	0.02
Volatile Organic Compounds (VOC)	0.03
Sulfur Dioxide (SO_2)	0.001

The application to construct and operate the emergency generator set and the draft permit and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002

Stephen.Ours@dc.gov

No comments or hearing requests submitted after October 16, 2017 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR § 210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#7166) to DC Housing Authority C/O CIH Properties Inc. to operate a 100 kWe emergency generator set powered by a 166 hp diesel-fired engine at Claridge Towers, located at 1221 M Street NW, Washington DC. The contact person for facility is José R. Flora, Property Director, at 240 882-8940. The applicant's mailing address is 9316 Piney Branch Road #106, Silver Spring MD 20903.

The estimated maximum emissions from the emergency generator set, assuming 500 hours per year of operation, are as follows:

	Maximum Annual Emissions
Pollutant	**(tons/yr)**
Total Particulate Matter (PM Total)	0.09
Sulfur Dioxide (SO_2)	0.08
Nitrogen Oxides (NOx)	1.29
Volatile Organic Compounds (VOC)	0.10
Carbon Monoxide (CO)	0.28

The proposed permitted emission limits are as follows:

a. Visible emissions shall not be emitted into the outdoor atmosphere from this generator set, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

Note that 20 DCMR 606 is subject to an EPA-issued call for a State Implementation Plan (SIP) revision (known as a "SIP call") requiring the District to revise 20 DCMR 606. See "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction", 80 Fed. Reg. 33840 (June 12, 2015). It is likely that this federal action will result in changes to the requirements of 20 DCMR 606. Any such changes, once finalized in the DCMR, will supersede the language of Condition (a) as stated above.

b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No comments or hearing requests submitted after October 16, 2017 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

HOWARD UNIVERSITY PUBLIC CHARTER MIDDLE SCHOOL OF MATHEMATICS & SCIENCE

REQUEST FOR PROPOSALS

Accounting & Financial Support

In Compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995, Howard University Public Charter Middle School of Mathematics & Science hereby post notice that it will be will be accepting bids for the following services:

Accounting & Financial Support:
To provide Accounting & Financial Support services for a contract period of ONE year, with the ability to renew for TWO more consecutive years.

Email PDF copy of proposal for the furnishing Accounting & Financial Services, for Howard University Public Charter School of Mathematics & Science (HU-(MS)2) to info@hums2.org. In addition to a PDF copy, one sealed copy of proposal marked "IT Service / Support Proposal" must arrive to: 405 Howard Pl NW, Washington, DC 20059. **Both bids must arrive by September 22, 2017 at 2:00 P.M**. Please only consider the bid received when you received a confirmation email.

Bids received after the time established for the receipt of bids will not be considered regardless of the cause for the delay in the receipt of any such bid.

HOWARD UNIVERSITY PUBLIC CHARTER MIDDLE SCHOOL OF MATHEMATICS & SCIENCE

REQUEST FOR PROPOSALS

Data Management

In Compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995, Howard University Public Charter Middle School of Mathematics & Science hereby post notice that it will be will be accepting bids for the following services:

Data Management:
To provide Data Management services for a contract period of ONE year, with the ability to renew for TWO more consecutive years.

Email PDF copy of proposal for the furnishing of Data Management Services, for Howard University Public Charter School of Mathematics & Science (HU-(MS)2) to info@hu-ms2.org. In addition to a PDF copy, one sealed copy of proposal marked "Data Management Services" must arrive to: 405 Howard Pl NW, Washington, DC 20059 by September 22, 2017 at 2:00 P.M. Please only consider the bid received when you received a confirmation email.

Bids received after the time established for the receipt of bids will not be considered regardless of the cause for the delay in the receipt of any such bid.

HOWARD UNIVERSITY PUBLIC CHARTER MIDDLE SCHOOL OF MATHEMATICS & SCIENCE

REQUEST FOR PROPOSALS

Information Technology (IT) Services/ Support

In Compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995, Howard University Public Charter Middle School of Mathematics & Science hereby post notice that it will be will be accepting bids for the following services:

Comprehensive Information Technology (IT) Services/ Support:
To provide IT services for a contract period of ONE year, with the ability to renew for TWO additional consecutive years.

Email PDF copy of proposal for the furnishing IT Service and Support, for Howard University Public Charter School of Mathematics & Science (HU-(MS)2) to info@hums2. org. In addition to a PDF copy, one sealed copy of proposal marked "IT Service / Support Proposal" must arrive to: 405 Howard Pl NW, Washington, DC 20059. Both bids must arrive by September 22, 2017 at 2:00 P.M. Please only consider the bid received when you received a confirmation email.

Bids received after the time established for the receipt of bids will not be considered regardless of the cause for the delay in the receipt of any such bid.

INTERAGENCY COUNCIL ON HOMELESSNESS

NOTICE OF PUBLIC MEETING

Full Council

The DC Interagency Council on Homelessness (ICH) will be holding a meeting on Tuesday, September 19, 2017 at 2:00 pm. The meeting will be held at the Patricia Handy Place for Women (Address: 810 5th St NW, Washington, DC 20001).

Below is the draft agenda for this meeting.

For additional information, including updates on location, please visit the ICH calendar online at http://ich.dc.gov/events. You can also contact the ICH info line at (202) 724-1338 or ich.info@dc.gov.

Meeting Details

Date:	Tuesday, September 19, 2017	
Time:	12:30 – 1:30 pm	Pre-Meeting for advocates, agencies, consumers, providers
	2 – 3:30 pm	Full Council
Location:	Patricia Handy Place for Women, Multi Purpose Room 810 5th St NW, Washington, DC 20001	

Updates will be available online http://ich.dc.gov/events

Draft Agenda

I. Welcome and Opening Remarks

II. Public Comments

III. FY2018 Winter Plan

IV. Coordinated Assessment and Housing Placement (CAHP) System for Singles

V. Public Comments (*Time Permitting*)

VI. Adjournment

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-42

April 20, 2017

VIA E-MAIL

Mr. Christopher Peak

RE: FOIA Appeal 2017-42

Dear Mr. Peak:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

In a letter dated August 22, 2016, you submitted a FOIA request to the MPD for records related to arrests for prostitution-related offenses. Your request sought several categories of information. On March 3, 2017, the MPD partially granted your request by providing an Excel document that included many of the fields you requested. The MPD also explained that your request was denied in part, stating that the disclosure of certain information would constitute an unwarranted invasion of personal privacy under D.C. Official Code § 2-534(a)(2) ("Exemption 2") and D.C. Official Code § 2-534(a)(3)(C) ("Exemption 3(C)").

On appeal you challenge the MPD's partial denial, asserting the MPD improperly withheld: arresting officer's names, city of residence, repeat offender status, and subsequent disposition of cases.[1] For the disclosure of officer names, you argue that police officers have a reduced expectation of privacy in disclosure of their names and there is a significant public interest in policing prostitution. Regarding the remaining categories, you assert that the MPD failed to acknowledge their absence or provide justification for withholding the responsive information.

The MPD sent this Office a response to your appeal on April 14, 2017.[2] The MPD reaffirmed its position that officer names are exempt under Exemption 2 and Exemption 3(C) and cited case law in support thereof. The MPD argues that you have not identified alleged wrongdoing or reasons that releasing the names of police officers would advance the public interest as contemplated under the DC FOIA. Also under Exemption 3(C), the MPD asserts that the city of

[1] In your appeal you agreed with the MPD's decision to withhold the names of victims and defendants.
[2] A copy of the MPD's response is attached.

residence was withheld to protect the personal privacy of victims and defendants. Regarding the withholding of repeat offender status and case dispositions, the MPD asserts that it does not maintain that information.

Discussion

It is the public policy of the District of Columbia 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).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal stature are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Officer Names

Exemptions 2 and 3(C) of the DC FOIA relate to personal privacy. Exemption 2 applies to "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." 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." While Exemption 2 requires that the invasion of privacy be "clearly unwarranted," the word "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 Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

Records pertaining to investigations conducted by the MPD are exempt from disclosure under Exemption 3(C) if the investigations focus on acts that could, if proven, 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). *See also Rugiero v. United States Dep't of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well."). Since the records you seek relate to investigations that could result in civil or criminal sanctions, Exemption 3(C) applies to your request.

Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of one's individual privacy interests against the public interest in disclosing the officer's names. Absent substantial allegations of wrongdoing, courts generally recognize that law enforcement personnel have a privacy interest in nondisclosure of their names due to the potential for harassment or embarrassment if their identities are disclosed. *See e.g., Dorsett v.*

United States Dep't of the Treasury, 307 F. Supp. 2d 28, 38-39 (D.D.C. 2004); *Manna v. DOJ*, 51 F.3d 1158, 1166 (3d Cir. 1995); *see also Abraham & Rose, P.L.C. v. United States*, 138 F.3d 1075, 1083 (6th Cir. 1998) (stating that clear privacy interest exists with respect to names, addresses, and other identifying information, even if it is already available in other public filings).

With regard to the second part of the privacy analysis under Exemption 3(C), we examine whether the individual privacy interest is outweighed by the public interest to require disclosure. On appeal, you assert that there is significant public interest in the policing of prostitution activity. The MPD's response to your appeal accurately summarizes the public interest that is considered for the privacy analysis under DC FOIA.[3] *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 772-773 (1989).

Here, disclosing individual police officers' names would not shed light on the MPD's performance of its policing of prostitution activities and would constitute an invasion of police officers' privacy interests. As a result, the MPD properly withheld this information pursuant to Exemption 3(C) of the DC FOIA.

City of Residence, Offender Status, and Case Disposition

On appeal you raised the issue that the MPD did not explain its lack of response to your request for information related to city of residence, repeat offender status, and subsequent disposition of cases. You acknowledged the possibility that the MPD may not maintain responsive records. The MPD confirmed in its response to your appeal that it does not track or maintain the status of repeat offenders or the subsequent disposition of cases. However, the MPD asserted Exemption 3(C) for withholding city of residence information. While there is protected privacy interest for individual addresses in investigatory files, this Office is unaware of a privacy interest for a city of residence. *See e.g., Schoenman v. FBI*, 575 F. Supp. 2d 136, 159 (D.D.C. 2008).

The MPD asserts that information regarding the city of residence must be withheld because, when combined with other publicly available information, individual defendants and victims may be identified. The MPD's assertion does not adequately describe how city of residence data triggers Exemption 3(C) protection whereas the other information disclosed - the incident's date and time, approximate location, and related demographic information - did not. As a result, the MPD improperly withheld data regarding the city of residence from disclosure.

Conclusion

Based on the foregoing, we affirm in part and remand in part the MPD's decision. The MPD shall provide you with a record that includes city of residence data within 10 business days of this decision.

[3] See MPD's Response at pp. 2-3.

This shall constitute the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-43

April 18, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-43

Dear Mr. Sharp:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") unlawfully closed and conducted an inadequate search in response to your DC FOIA request.

After you filed your appeal, MPD informed our Office that it originally closed your request as duplicative because it was very similar to a previous FOIA request that you had made. The previous request was for the same type of records as you requested here, but the search range of the previous request was of a month shorter period of time. As a result, MPD's advised this Office that it has begun processing the subsequent request and will provide you with responsive documents as soon as feasible.

Since your appeal was based on MPD's initial response and MPD has indicated that it is conducting a new search, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the substantive responses MPD sends you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-44

April 21, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-44

Dear Mr. Sharp:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

On March 17, 2017, you submitted a FOIA request for "all e-mails sent and or received by MPD employee Mr. Donald Kaufman that include the name 'Jarrod Sharp.'"

On April 3, 2017, your request was granted in part and denied in part by MPD. MPD provided you with 51 pages of records. MPD partially redacted the records pursuant to D.C. Official Code §§ 2-534(a)(2) ("Exemption 2") and (4) ("Exemption 4") to protect personal privacy and deliberative process respectively. MPD also explained that some emails were withheld entirely pursuant to the attorney-client privilege under Exemption 4.

On April 6, 2017, you appealed MPD's denial, stating, "I hereby appeal this unlawful FOIA denial for reasons including but not limited to: (1) lack of adequate and/or comprehensive search; (2) lack of legal authority for denial; (3) improper use of FOIA exemptions; (4) improper use of attorney-client privilege; and (5) improper withholding of relevant public records."

This Office notified MPD of your appeal. MPD's response reaffirmed its decision to deny your FOIA request.[1] Additionally, MPD provided this Office with copy of the responsive records for an *in camera* review.

[1] A copy of MPD's response is attached.

Discussion

It is the public policy of the District of Columbia 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 . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

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). Accordingly, 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).

Adequacy of the Search

One of the primary issues in your appeal is whether MPD conducted an adequate search for the records at issue. 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. U.S. 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).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step 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 that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.*

Here, the request asked for the emails of a specific MPD employee and that employee conducted an email search of the requested phrase. All responsive records were disclosed except for those withheld pursuant to Exemption 4. On appeal you have not stated any factual basis that additional records may exist or that any known records were absent from MPD's disclosure. As a result, we find that the FOIA officer's search was reasonable and adequate in response to your request.

Application of Exemptions

You also assert without explanation that MPD used exemptions improperly in response to your request. The MPD claims it used Exemption 2 to make redactions to protect personal privacy and Exemption 4 to withhold communications protected by the attorney-client privilege and to redact deliberative communications.

Exemption 2 applies to "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Determining whether disclosure of a record would constitute an unwarranted invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

After reviewing the information redacted pursuant to Exemption 2, we find that there is a personal privacy interest in the information which includes identifying information such as names, phone numbers, email addresses, and personal incident descriptions. You have not asserted any countervailing public interest in disclosure. *See Bartko v. United States Dep't of Justice*, 79 F. Supp. 3d 167, 173 (D.D.C. 2015) ("In an ultimate balancing, something in the privacy bowl outweighs nothing in the public-interest bowl every time"). As a result, MPD's redaction made pursuant to Exemption 2 was proper. Further, MPD's disclosure is consistent with the requirements of reasonably redacted disclosure found in D.C. Official Code § 2-534 (b)

Exemption 4 vests public bodies with discretion to withhold "inter-agency or intra-agency memorandum[a] and letters which would not be available by law to a party other than an agency in litigation with the agency." 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). Privileges in the civil discovery context include the attorney-client privilege and deliberative process privilege. *See Harrison v. BOP*, 681 F. Supp. 2d 76, 82 (D.D.C. 2010); *see also McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011).

The attorney-client privilege protects "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." *Mead Data Cent. Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977); *see also Rein v. U.S. Patent and Trademark Office*, 553 F. 3d 353, 377 (4th Cir. 2009). The privilege also applies "communications between attorneys that reflect client-supplied information." *Elec. Privacy Info. Ctr. v. DHS*, 384 F. Supp. 2d 100, 114 (D.D.C. 2005).

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 it 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.

Here, the communications withheld under the attorney-client privilege involve emails among MPD attorneys regarding a legal matter. The redaction made pursuant to the deliberative process privilege discusses a potential resolution to an administrative issue; therefore, it is both predecisional and deliberative. As a result, MPD's withholding made pursuant to the attorney-client privilege and redaction made pursuant to the deliberative process privilege were proper under Exemption 4.

Conclusion

Based on the foregoing, we affirm MPD's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-45

April 24, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-45

Dear Mr. Sharp:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you challenge the Metropolitan Police Department's ("MPD") response to your request for certain correspondence MPD received from the United States Department of Justice.

Background

You submitted a request to the MPD for a copy of "the August 17, 2012 letter sent from the U.S. DoJ to Assistant Chief Newsham which discusses, inter alia, Harris Corporation and/or any other documents sent from U.S. DoJ to the MPD that refer or relate to the Harris Corporation." In response, MPD sent you 6 pages of records responsive to your request, which were redacted in part to protect personal information. You appealed to this Office "for reasons including but not limited to: (1) lack of adequate search; (2) improper and unnecessary redactions; incomplete production, to wit only one of many letters was produced; and (4) lack of lawful authorization for denial."

MPD provided this Office with a written response to your appeal, explaining that it interpreted your request as being for a specific August 17, 2012 letter, which it provided to you. MPD's response further points out that you have not "sufficiently articulated the basis for the appeal." Moreover, MPD contends that you have not articulated why you believe that the redactions were improper. Upon request, MPD provided this Office with an unredacted copy of the document for in camera review.

Discussion

It is the public policy of the District of Columbia 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 . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public

records is subject to various exemptions that may form the basis for denial of a request. See D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

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). Accordingly, 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).

Adequacy of the Search

One of the issues raised in your single sentence appeal is whether MPD conducted an adequate search for the records at issue. 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. U.S. 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).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. Doe v. D.C. Metro. Police Dep't, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing Oglesby, 920 F.2d at 68). This first step 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 that the agency maintains. Id. Second, the agency must affirm that the relevant locations were in fact searched. Id. Generalized and conclusory allegations cannot suffice to establish an adequate search. See In Def. of Animals v. NIH, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

This Office agrees with MPD that you requested a specific letter that was provided to you and that MPD's search was adequate. Your original request describes the subject matter of a letter (i.e. "please provide a copy of the August 17, 2012 letter . . . which discusses, inter alia, Harris Corporation and/or any other documents sent . . . .), and it appears that the letter provided to you corresponds with that description. To the extent that your request was for additional documents,

your original request is grammatically ambiguous and unclear. Further, your appeal does not clarify the ambiguity of your original request or explain the basis for your belief that additional August 17, 2012 letters discussing the Harris Corporation "and/or any other documents sent from U.S. DoJ to the MPD" exist. Here, MPD conducted an adequate search in response to your request for an August 17, 2012 letter discussing, among other things, the Harris Corporation. If you are seeking additional documents from MPD, you are entitled to file a separate FOIA request that clearly specifies these documents.

Reasonable Redaction

D.C. Official Code § 2-534(b) requires that an agency produce "[a]ny reasonably segregable portion of a public record . . . after deletion of those portions" that are exempt from disclosure. Here, MPD has made redactions on the basis of the personal privacy exemption, D.C. Official Code § 2-537 (a)(2). Having reviewed the document in camera, this Office disagrees with MPD's assessment in part. The redactions made on pages 3, 4, and 5 do not implicate a privacy interest, as they make reference to an employment position (e.g., "Assistant Director") and do not identify an individual. Job positions do not hold privacy interests, individuals do. In order to be considered personal identifying information, the information must specify an individual. Accordingly, MPD should provide you with a version of the responsive letter without the redactions originally made to pages 3, 4 and 5. As to the remaining redactions of names, this Office finds that MPD redacted them properly. See Banks v. DOJ, 813 F. Supp. 2d 132, 142 (D.D.C. 2011).

Conclusion

Based on the foregoing, we affirm MPD's decision in part and remand in part. MPD shall provide you with a copy of the responsive letter, as specified above, within 10 business days. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-46

April 24, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-46

Dear Mr. Sharp:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that you submitted a request to the Metropolitan Police Department ("MPD") for a copy of the most recent collective bargaining agreement executed between the police union(s) and the MPD, and that MPD made improper and unnecessary redactions to the document it disclosed to you.

MPD provided this Office with a written response to your appeal, explaining that the document it released to you is the current version of the collective bargaining agreement between MPD and the police union and that "[n]o redactions were made to the document that was obtained from the department's labor unit." This explanation corresponds with the letter MPD initially sent to you with the responsive document. The letter states, in relevant part, "Please be advised that some provisions of the document are no longer in effect. The provisions that are no longer in effect have been crossed-out or blacked-out and replaced with new provisions."

We accept the representations MPD made to you initially and on appeal that it has provided you with the contract you requested in the form in which the contract currently exists, and that no redactions have been made. What you may have perceived to be redactions are in fact amended contract provisions.

Based on the foregoing, we affirm MPD's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

[1] A copy of MPD's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-47

April 24, 2017

VIA ELECTRONIC MAIL

Mr. Nathan Bresee

RE: FOIA Appeal 2017-47

Dear Mr. Bresee:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") improperly withheld records you requested under the DC FOIA.

Background

On March 22, 2017, you submitted a FOIA request to DCRA for records relating to the company "AQUARIUS ENTERPRISES GP."

On April 7 2017, DCRA granted your request in part and denied your request in part, stating that it could not provide DCRA communications to you because you provided email addresses of third party non-government employees to be used as search terms, therefore release of the records would constitute an invasion of personal privacy pursuant to D.C. Official Code § 2-534(a)(2).

This Office received your appeal of DCRA's partial denial on April 7, 2017. In your appeal, you argue that there is no expectation of privacy between government employees and third parties, and that "[d]isclosure of communications between administrative agencies and third-parties is at the heart of D.C. Code 2-531." Your appeal further argues that DCRA has misapplied the privacy standard found in D.C. Official Code § 2-534.

This Office notified DCRA of your appeal. In response, DCRA advised us of the genesis of the search it conducted.[1] Upon receiving your request for DCRA communications, DCRA asked you to identify a government employee whose account should be searched. You responded by providing DCRA with the email addresses of several private individuals to be used as search terms. DCRA then denied your request on the basis that publicly identifying individuals who communicate with DCRA would create a chilling effect on concerned citizens reporting violations to the agency.

[1] A copy of DCRA's response to your appeal is attached.

Discussion

It is the public policy of the District of Columbia 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 . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

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). Accordingly, 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).

Adequacy of the Search

One of the primary issues in your appeal is whether DCRA conducted an adequate search for the records at issue. 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. U.S. 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).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step 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 that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.*

DCRA did not satisfy the first element of conducting a reasonable search here because it failed to determine which record repositories were likely to contain responsive documents. Instead, DCRA improperly shifted the burden to you by refusing to conduct a search until you identified the government employees associated with the records you sought. This was improper, as your request as submitted was not overly broad or vague, and DC FOIA does not require a requester to know the names of agency employees in order to request their email communications. Further, once you complied with DCRA's request for additional information by providing email addresses of third parties to be searched (presumably because you could not identify the relevant DCRA employees), DCRA used your identification of specific email addresses as a basis to withhold records.

It was the responsibility of the DCRA FOIA officer to make a determination as to where the requested documents were likely to be located – a responsibility that can be met by identifying agency employees in the relevant programs and making inquiries about the nature of document creation and retention in those programs. *See Truitt v. Dep't of State*, 897 F.2d 540, 545 n. 36 (D.C. Cir. 1990) (quoting H.R. Rep. No. 93-876, 93d Cong., 2d Sess. at 6 (1974), reprinted in 1974 U.S.C.C.A.N. 6267, 6271)). (finding a request to not be vague when "a professional employee of the agency who [is] familiar with the subject area of the request … [could] locate the record with a reasonable amount of effort.") Absent your direction to search a specific government employee's email account, DCRA should have made an effort to identify the relevant programmatic DCRA employees who were likely to have communicated about the subject of your request. As a result, we find that DCRA did not conduct an adequate search.

Reasonable Redaction

D.C. Official Code § 2-534(b) requires that an agency produce "[a]ny reasonably segregable portion of a public record . . . after deletion of those portions" that are exempt from disclosure. The phrase "reasonably segregable" is not defined under DC FOIA and the precise meaning of the phrase as it relates to redaction and production has not been settled. *See Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 322 n.16 (D.C. Cir. 1982). To withhold a record in its entirety, one interpretation is that an agency must demonstrate that exempt and nonexempt information are so inextricably intertwined that the excision of exempt information would produce an edited document with little to no informational value. *See Antonelli v. BOP*, 623 F. Supp. 2d 55, 60 (D.D.C. 2009).

Here, DCRA has withheld documents in their entirety instead of redacting personally identifying information. DCRA must conduct an additional search and then revisit the issue of reasonable redaction, ensuring that any record or portion of a record withheld is done in a manner consistent with D.C. Official Code § 2-534(b).

Conclusion

Based on the foregoing, we remand DCRA's decision. DCRA shall conduct a reasonable search for responsive records and provide you with non-exempt responsive records (subject to redaction) on a rolling basis beginning 10 days from the date of this decision. You may challenge DCRA's subsequent response by filing a separate appeal.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Keith Chambers II, Attorney Advisor Fellow, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-48

April 24, 2017

VIA ELECTRONIC MAIL

Mr. Nathaniel Porter

RE: FOIA Appeal 2017-48

Dear Mr. Porter:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

On March 29, 2017, you submitted a request to MPD seeking the "radar training certificate" of an MPD employee who issued a citation on March 14, 2017. MPD denied your request, asserting privacy exemptions under DC FOIA and stating that because you did not have authorization from the MPD employee to release the certificate, doing so would constitute a "clearly unwarranted invasion of personal privacy."

By email dated April 5, 2017, you appealed MPD's denial, contending that you are preparing to contest a citation and that the certificate's existence would be used as evidence in your case. You further contend that there is no privacy interest in ensuring that the MPD officer who issued your ticket has in fact been trained and certified by MPD to issue such tickets. On April 18, 2017, MPD sent its response to your appeal to this Office.[1] Therein, MPD reasserted D.C. Official Code § 2-534(a)(2), arguing that there is a privacy interest in the record and no public interest in its release.

Discussion

It is the public policy of the District of Columbia 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). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

[1] MPD's response is attached to this decision.

The crux of this matter is whether the radar certification you requested is exempt from disclosure under DC FOIA because releasing it would constitute a clearly unwarranted invasion of privacy. D.C. Official Code § 2-534(a)(2) ("Exemption 2") provides 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." Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis is determining whether a sufficient privacy interest exists. *Id*.

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). Government employees have a privacy interest in documents that the government may maintain where a government record contains purely personal details that do not shed light on agency functions. *See, e.g., DOD v. FLRA*, 510 U.S. 487, 500 (1994). In general, there is a sufficient privacy interest in personal identifying information, such as phone numbers or addresses. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Additionally, government employees have a privacy interest in their job performance evaluations. *Smith v. Dep't of Labor*, 798 F. Supp. 2d 274, 283-85 (D.D.C. 2011). Similarly protected are the identities of employees who provide information to investigators. *McCann v. HHS*, No. 10-1758, 2011 WL 6251090, at *3 (D.D.C. Dec. 15, 2011). Even suggestions submitted to an agency "Employee Suggestion Program" may be withheld if identification could lead to embarrassment upon disclosure. *Matthews v. USPS*, No. 92-1208-CV-W-8, slip op. at 5 (W.D. Mo. Apr. 15, 1994).

In each of the above types of cases there is a level of stigma that may attach to the employee upon release of government records identifying the employee, thereby creating a privacy interest. Here, we see no similar potential for stigma as in the above cited cases. The MPD trains and certifies its employees in the use of radar, and this certification is necessary for MPD employees to issue certain types of citations. MPD employees attest to this training and certification by signing a log that states that they have "been trained and … [are] currently certified by the Metropolitan Police Department to operate Photo RADAR equipment. . . ." *See* Original FOIA Request at 2. This Office sees no stigma that would attach to an MPD employee through the release of MPD's certification that the employee is in fact qualified to do his or her job.[2]

The second part of a privacy analysis examines whether the individual privacy interest is outweighed by the public interest. Having found no privacy interest in a radar certification, this Office need not weigh the public interest. We note, however, that the requested document, a certification of qualification for a position, appears to be similar to a type of record for which there is a well-established public interest in release: the resume of a successful applicant for a government position. *See Core v. United States Postal Serv.*, 730 F.2d 946, 948 (4th Cir. 1984) ("Having balanced the privacy interests of the five successful applicants against the public's

[2] If the certification included a score on a test, that would implicate a privacy interest, but a document that indicates only that training has been satisfactorily completed does not.

interest, we conclude that disclosure would not 'constitute a clearly unwarranted invasion of personal privacy.' Exemption 6, therefore, does not bar disclosure of the information Core seeks about the successful applicants."); *Barvick v. Cisneros*, 941 F. Supp. 1015, 1017 (D. Kan. 1996) ("[Requester] received from [Agency] a redacted . . . job application of the successful applicant for the . . . position, rating worksheets, and the selection roster. Citing Exemption 6 of the FOIA, 5 U.S.C. § 522(b)(6), [Agency] informed [Requester] that it would release redacted [applications] for successful candidates but not resumes or [applications] for unsuccessful applicants."); FOIA Appeals 2011-36, 2011-56, 2012-75, 2014-06, 2014-11, 2014-27, 2016-80, 2016-81.[3]

Conclusion

Based on the foregoing, we reverse and remand MPD's decision. MPD shall provide you with the requested certification, subject to appropriate redaction, within 10 business days of the date of this decision.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

[3] *See also Habeas Corpus Resource Ctr. v. DOJ*, No. 08-2649, 2008 WL 5000224, at *4 (N.D. Cal. Nov. 21, 2008); *Cowdery, Ecker & Murphy, LLC v. Dep't of Interior*, 511 F. Supp. 2d 215, 219 (D. Conn. 2007; *Samble v. U.S. Dep't of Commerce*, No. 1:92-225, slip op. at 11 (S.D. Ga. Sept. 22, 1994); *Associated Gen. Contractors, Inc. v. EPA*, 488 F. Supp. 861, 863 (D. Nev. 1980).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-49

April 25, 2017

VIA ELECTRONIC MAIL

Ms. Rachel George

RE: FOIA Appeal 2017-49

Dear Rachel George:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you challenge the response made by the Office of the Inspector General ("OIG") to a record request you submitted to the OIG under DC FOIA.

Background

On February 15, 2017, you submitted a series of FOIA requests to OIG for records relating to OIG report # 15-I-0068. OIG responded to your request, granting it in part and denying it in part. OIG provided you with responsive documents totaling 27 pages, some of which OIG redacted pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2"). Additionally, OIG withheld some responsive records pursuant to D.C. Official Code § 2-534(a)(4).

On April 10, 2017, this Office processed your appeal. In your appeal, you provide biographical information about yourself and your career, and assert that the withheld documents would be personally helpful to you in a forthcoming administrative proceeding.

The OIG responded to your appeal in a letter to this Office in which it reasserted its position that the records were properly redacted and withheld. OIG's response emphasized that while it had redacted the names of individuals, it had left their respective job titles intact as to sufficiently advance the purpose of FOIA. Further, OIG's response explained that the withheld documents were draft policy documents that where both predecisional and deliberative in nature. OIG provided this office with a signed affidavit attesting to the legal positions it asserted in its response.

Discussion

It is the public policy of the District of Columbia 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). The right to examine public records is subject to various exemptions that may form the basis of 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).

Personal Privacy

One of the issues in your appeal is the redaction of government employee names in parts of the documents provided to you by OIG. D.C. Official Code § 2-534(b) requires that an agency produce “[a]ny reasonably segregable portion of a public record . . . after deletion of those portions” that are exempt from disclosure. Here, OIG has made redactions on the basis of the personal privacy exemption, D.C. Official Code § 2-537 (a)(2), by redacting the names of government employees.

D.C. Official Code § 2-534(a)(2) (“Exemption 2”) provides 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.” Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis determining whether a sufficient privacy interest exists. *Id*.

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep’t of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep’t. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Moreover, there is a sufficient privacy interest in recorded witness statements. *See Fitzgibbon v. CIA*, 911 F.2d 755, 767 (1990) (finding a “‘strong interest’ of individuals, whether they be suspects, witnesses, or investigators, ‘in not being associated unwarrantedly with alleged criminal activity.’”) *See also See Banks v. DOJ*, 813 F. Supp. 2d 132, 142 (D.D.C. 2011). Given the case law, this Office finds that there is a substantial privacy interest in the names of government employees in OIG’s report.

The second part of a privacy analysis examines whether the individual privacy interest is outweighed by the public interest. The Supreme Court has stated that this analysis must be conducted with respect to the central 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.

Reporters Comm. for Freedom of Press, 489 U.S. at 772-773.

Courts have consistently held that the purpose of FOIA is to inform citizens of "what their government is up to." *Id*. "This inquiry . . . should focus not on the general public interest in the subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld." *Schrecker v. United States Dep't of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (internal citations omitted). Information is deemed valuable under FOIA when it would permit public scrutiny of an agency's behavior or performance. *Id.* at 666.

Here, you have proffered no overriding public interest in unmasking the names of the government employees in the report – instead you have stated the identities of these officials would be of personal value to you in an administrative proceeding. This Office agrees with OIG. The unredacted job titles allow you to sufficiently analyze agency conduct, and the redaction of personal identities would prevent the potential for unnecessary embarrassment and harassment. As a result, OIG's redactions were proper.

Deliberative Process

OIG withheld two Office of the Attorney General draft documents pursuant to the deliberative process privilege of Exemption 4. The primary purposes of the deliberative process privilege under Exemption 4 are to "assure that subordinates within an agency will feel free to provide the decision maker with their uninhibited opinions and recommendations …; to protect against premature disclosure of proposed policies before they have been finally formulated or adopted; and to protect against confusing the issues and misleading the public by dissemination of documents suggesting reasons and rationales for a course of action which were not in fact the ultimate reasons for the agency's action." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

To be properly withheld under Exemption 4, a record must be contained in an inter- or intra-agency document. Therefore, Exemption 4 is typically limited to documents transmitted within or among government agencies. *See Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 10-11 (U.S. 2001). One of the litigation privileges that Exemption 4 is commonly invoked to protect is the deliberative process privilege. *See McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011).

To qualify for protection under the deliberative process privilege, information must be predecisional and deliberative. *Coastal States Gas* 617 F.2d at 866. A document is predecisional if it was generated before the adoption of an agency policy, and it is deliberative if it "reflects the give-and-take of the consultative process." *Id*. Documents can be deliberative either by assessing

the merits of a particular viewpoint, or by articulating the process used by the agency to formulate a decision. *Id*. at 867.

> 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. at 866.

The threshold requirement that Exemption 4 applies only to inter- or intra-agency documents is met here because the documents were transmitted from one agency, OAG, to another agency, OIG. OIG notes that the documents are marked as a draft, and that at least one of the documents at the time of transmittal was noted as being under review for final approval. OIG has by signed affidavit attested that: (1) the documents are both predecisional and deliberative; (2) their release could have the effect of preventing open and frank discussion of internal policy matters by OAG; and (3) the release of draft language could cause public confusion if released prior to the final version. *See e.g.*, *Viropharma Inc. v. HHS*, 839 F. Supp. 2d 184, 193-94 (D.D.C. 2012) (deciding what to include in a report would reveal decisions of the drafter); *Hamilton Sec. Group Inc. v. HUD*, 106 F. Supp. 2d 23, 33 (D.D.C. 2000) (protecting facts in a draft report to prevent chilling or future deliberations). This Office accepts OIG's representations and finds that the deliberative process privilege of Exemption 4 applies to the two draft OAG reports. As a result, OIG's withholding of the two documents was proper.

Conclusion

Based on the foregoing, we affirm OIG's decision and hereby dismiss your appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Daniel W. Lucas, Inspector General, OIG (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-50

April 25, 2017

VIA ELECTRONIC MAIL

Jarrod Sharp

RE: FOIA Appeal 2017-50

Dear Mr. Sharp:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") unlawfully failed to grant your request for a fee waiver with respect to a FOIA request you submitted to the MPD.

This Office's jurisdiction is limited to "review[ing] the public record to determine whether [a record] may be withheld from public inspection." D.C. Official Code § 2-537(a). As a result, we do not have the authority to review disputes over FOIA fees.[1]

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,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

[1] *See e.g.*, Freedom of Information Act Appeals 2014-04 and 2013-26.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-51

April 21, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-51

Dear Mr. Sharp:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Motor Vehicles ("DMV") failed to respond to a request it received on March 20, 2017, for records related to a notice of infraction and superior court case.

After you filed your appeal, on April 20, 2017, the DMV sent a response to your request indicating that several categories of your request were duplicative of a request that you submitted and the DMV responded to in February of 2017. In response to your March request, the DMV disclosed additional documents that were created after your previous request. Also, the DMV reminded you that you had not yet paid the fee associated with your February request.

As your appeal was based on the DMV's failure to respond to your FOIA request, and the DMV has now responded we consider your appeal to be moot, and it is dismissed. You have already submitted a separate FOIA appeal to the DMV's substantive response that will be processed by this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Kelly J. Davis, Assistant General Counsel, DMV (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-52

April 26, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod S. Sharp, Esq.

RE: FOIA Appeal 2017-52

Dear Mr. Sharp:

This letter responds to the above-captioned administrative appeal that you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In this appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

On April 4, 2017, you submitted a FOIA request for "any and all records that refer, relate, and/or discuss MPD's use of conductive electronic weapons (CEW) (e.g., TASERs)." On April 11, 2017, MPD denied your request, stating in relevant part, "The Metropolitan Police Department does not use electronic weapon technology. Accordingly, we are unable to provide you with any responsive records."

On April 11, 2017, you appealed MPD's denial, stating, "I hereby appeal the MPD's unlawful denial of the abovementioned FOIA request for the reasons including, but not limited to, the following: (1) lack of adequate search; (2) lack of legal authority for denial; and (3) misstatements of fact to wit, please find an article below that confirms, contrary to the MPD's denial, the MPD uses electronic weapons (e.g., Tasers)." Additionally, you provided this Office with a hyperlink to a news story dated October 28, 2015, which states in part that "D.C. police don't have Tasers. . . ."

This Office notified MPD of your appeal. MPD responded on April 19, 2017, explaining its determination that no responsive records exist.[1] MPD's response states that "there are no responsive documents as the department is not presently using TASERS. The FOIA Officer contacted an official in the training division who confirmed that TASERS have not been issued to officers. The news report that Mr. Sharp references discusses the decision to have supervisors equipped with the devices. However, no devises have been issued to date."

[1] A copy of MPD's response is attached.

Discussion

It is the public policy of the District of Columbia 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 . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

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). Accordingly, 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).

Adequacy of the Search

The primary issue raised by your appeal is whether MPD conducted an adequate search for the records at issue. 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. U.S. 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).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step 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 that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* However, a search for records is unnecessary when it was supported by an

agency attestation that a person familiar with the records maintained by the agency determines that no responsive records are maintained. *See Espino v. DOJ*, 869 F. Supp. 2d 25, 28 (D.D.C. 2012) (upholding a decision not to search when agency declarations stated that agency did not maintain requested records); *Thomas v. Comptroller of the Currency*, 684 F. Supp. 2d 29, 33 (D.D.C. 2010) (affirming a decision not to search when an agency determined that given its system of records, "there was no reasonable expectation of finding responsive documents").

On appeal, in support of your contention that "MPD uses electronic weapons" you provide a hyperlink to a local news story from 2015 which states in part that "D.C. police don't have Tasers. . . ." . Besides this link, you offer no evidence or rational basis to support your speculation that "MPD uses electronic weapons." In contrast, the MPD has asserted in response to your appeal that based on conversations with its training division, MPD does not use TASERS and that none have been issued to date. As a result of MPD not using TASERS, MPD does not maintain any records discussing MPD's use of TASERS, such that no responsive records exist. Because no such records are maintained, MPD did not conduct a search. This was proper because MPD reasonably determined that no relevant record repository existed to search. Absent any substantiation on your part that records do exist, we accept MPD's determinations and conclude that MPD's response to your request was adequate.

Conclusion

Based on the foregoing, we affirm MPD's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-53

April 27, 2017

VIA ELECTRONIC MAIL

Ms. Geneva Sands

RE: FOIA Appeal 2017-53

Dear Ms. Sands:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that surveillance videos you requested pertaining to a December 4, 2016 arrest were improperly withheld by the Metropolitan Police Department ("MPD").

Background

You submitted a request under the DC FOIA to the MPD for surveillance videos pertaining to a December 4, 2016 arrest at Comet Ping Pong. MPD denied your request pursuant to D.C. Official Code § 2-534(a)(3)(C) ("Exemption 3(C)").

On April 12, 2017, you filed this appeal, challenging MPD's denial. In your appeal you argue that the public interest in release outweighs privacy concerns because of "the threat posed by 'fake news.'" To this end, your maintain that release of the surveillance video would "shed light on the issue of 'fake news' and . . . [would] serve the public interest." You further note that the subject of the video acted in the public, with no expectation of privacy and that other photos and videos of the incident are already publicly available such that the subject's "likeness has already been recorded in the news media." Additionally, you point out that the subject of the video has pleaded guilty to a crime and admitted his guilt.

MPD sent this Office a response to your appeal on April 19, 2017.[1] MPD reaffirmed its position, asserting that the subject of the video had a greater than *de minimus* privacy interest and that release of the video would not support the public interest as it is defined in FOIA. As a result, MPD reasserted that the withholding of videos was proper under Exemption 3(C).

Discussion

It is the public policy of the District of Columbia 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

[1] A copy of MPD's response is attached to this determination.

policy, the DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." *Id*. at § 2-532(a).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal stature are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemptions 2[2] and 3(C) of the DC FOIA relate to personal privacy. Exemption 2 applies to "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Exemption 3(C) provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, … to the extent that the production of such records would . . . Constitute an unwarranted invasion of personal privacy." While Exemption 2 requires that the invasion of privacy be "clearly unwarranted," the word "clearly" is omitted from Exemption 3(C). Thus, the standard for evaluating a potential invasion of privacy under Exemption 3(C) is broader than under Exemption 2. *See United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

Records pertaining to investigations conducted by the MPD can be exempt from disclosure under Exemption 3(C) if the investigations focus on acts that could, if proven, 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). *See also Rugiero v. United States Dep't of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well."). Since the records you seek relate to an investigatory records that resulted in criminal sanctions, Exemption 3(C) applies to your request.

Under the applicable case law, your argument that the videos at issue should be released because the subject's "likeness has already been recorded in the news media" is not persuasive. *Long v. United States DOJ*, 450 F. Supp. 2d 42, 68 (D.D.C. 2006) ("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."). As a result, the fact that the videos may have been played in court or that other footage of the subject may already exist in the public domain is not dispositive of the privacy interest analysis here.

Determining whether disclosure of a record would constitute an unwarranted invasion of personal privacy requires a balancing of one's individual privacy interests against the public interest in disclosure. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 756. On the issue of privacy interests, the D.C. Circuit has held:

> [I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose

[2] D.C. Official Code § 2-534(a)(2).

> of Exemption 7(C)[3]. "The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators."

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984) (quoting *Bast v. United States Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)).

As discussed in *Stern*, individuals have a strong interest in not being associated with criminal activity, and protection of this privacy interest is a primary purpose of Exemption 3(C). As a result, we find that there is a sufficient privacy interest here associated with individuals captured on surveillance cameras during an arrest. The disclosure of the videos you seek could have a stigmatizing effect on the subjects of the videos.

With regard to the balancing analysis under Exemption 3(C), we examine whether the privacy interests of the individuals recorded are outweighed by the public interest in disclosure. On appeal, you argue that disclosure would help the public "understand the full nature of the threat posed by 'fake news.'" In order to for a document's release to be in the public interest under DC FOIA, the document's release must further the statutory purpose of DC FOIA:

> This statutory purpose is furthered by disclosure of official information that "sheds light on an agency's performance of its statutory duties." *Reporters Committee,* 489 U.S. at 773; *see also Ray,* 112 S. Ct. at 549. Information that "reveals little or nothing about an agency's own conduct" does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee,* 489 U.S. at 773. The identity of one or two individual relatively low-level government wrongdoers, released in isolation, does not provide information about the agency's own conduct.

Beck v. Department of Justice, et al., 997 F.2d 1489 (D.C. Cir. 1993) at 1492-93.

You have not asserted how disclosing the withheld records at issue would shed light on MPD's conduct or performance of its statutory duties, nor do we independently find a public interest (as contemplated by DC FOIA) in the release of the records. Having established that the subjects of the videos hold a privacy interest and that no countervailing public interest exists, we find that MPD properly withheld the videos. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993) ("In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure . . . 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.'"). *See also, Bartko v. United States Dep't of Justice*, 79 F. Supp. 3d 167, 173 (D.D.C. 2015) ("In an ultimate balancing, something in the privacy bowl outweighs nothing in the public-interest bowl every time.").

[3] Exemption 7(C) is the federal FOIA equivalent to DC FOIA's Exemption 3(C).

Conclusion

Based on the forgoing, we affirm the decision issued by the MPD and dismiss your appeal.

This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-54

April 27, 2017

VIA ELECTRONIC MAIL

Mr. Kahlill Palmer

RE: FOIA Appeal 2017-54

Dear Mr. Palmer:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), alleging that the Department of Consumer and Regulatory Affairs ("DCRA") improperly responded to a request you submitted to DCRA.

You submitted a FOIA request to DCRA on July 18, 2016, for a wide range of data involving property inspections, violations, and certificates of occupancy.

On August 25, 2016, DCRA denied your request, stating that "no such list exists that contains the requested documentation" and that DCRA was not required to create records. DCRA described the information it does maintain, invited you to file a new request, and referred you to the Office of the Chief Technology Officer for information on data migrations and system updates.

On April 11, 2017, you appealed DCRA's denial. In support of your appeal you argue that you have a sufficient basis to believe that DCRA maintains the information you requested. You attached to your appeal correspondence illustrating your post-denial efforts to work with DCRA's Office of Information Systems to acquire the data that you requested, which DCRA's initially claimed it did not possess. Your appeal also notes that regardless of your good faith efforts to work with various DCRA employees, DCRA is still obligated to follow DC FOIA.

This Office notified DCRA of your appeal and asked the agency to respond. DCRA did not provide a formal response to this Office, nor did it seek an extension pursuant to 1 DCMR § 412.6. In the interest of expediency, this Office contacted DCRA's Office of Information Systems and was advised that some of the records you requested do in fact exist, in an excel format, and that DCRA has had difficulty transferring the file due to the size of the file. A follow-up telephone conversation with DCRA's Office of General Counsel confirmed that responsive documents do exist and that DCRA will be sending them to you today.

DCRA originally denied your request on the grounds that "no such list exists that contains the requested documentation." DCRA has since revised its position, and has represented to this

Office: (1) that responsive documents exist; and (2) that DCRA will provide the responsive documents to you today.

Based on DCRA's representation to this Office that DCRA will provide you documents by the close of business on the date of this decision, we dismiss your appeal as moot; provided that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to DCRA's substantive response[1].

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Charles Thomas, General Counsel, DCRA (via email)

[1] We note that while DCRA has indicated that it will provide you with responsive documents, we are unsure as to the nature or scope of the production, such that if you believe that DCRA does not adequately respond, you may file a separate appeal challenging DCRA's production.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-55

April 27, 2017

VIA ELECTRONIC MAIL

Mr. Randy Smith

RE: FOIA Appeal 2017-55

Dear Mr. Smith:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), alleging that the Metropolitan Police Department ("MPD") failed to respond to a request you submitted to MPD.

In specific, you contend that on March 17, 2017, you submitted a request to MPD for reports of gunfire detected within a specific timeframe and received no response. This Office notified MPD of your appeal, and MPD responded by indicating that due to the unexpected absence of the individual responsible for maintaining the requested information, MPD's FOIA office only recently received the responsive documents.[1] MPD staff is currently reviewing them and advised this Office that it expects to provide them to you within the next 2 business days.

The failure of a public body to comply with a request within the statutory timeframe shall be deemed a denial of the request under D.C. Official Code § 2-532(e). When an agency fails to disclose a public record, the Mayor shall compel the agency to do so. *See* D.C. Official Code § 2-537. Here, MPD has indicated to this Office that it is reviewing responsive documents and will send them to you within approximately 2 business days of the date of this decision. Based on this representation, we dismiss your appeal as moot; provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to MPD's substantive response.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

[1] A copy of MPD's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-56, 2017-57

May 4, 2017

VIA ELECTRONIC MAIL

Jarrod S. Sharp, Esq.

RE: FOIA Appeal 2017-56, 2017-57

Dear Mr. Sharp:

This letter responds to the twentieth and twenty-first[1] administrative appeals that you have submitted this year to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you assert that the Department of Motor Vehicles ("DMV") improperly withheld records you requested under the DC FOIA.

Background

On April 4, 2017, and on March 20, 2017, you submitted nearly identical requests to the DMV for all records related to a notice of infraction and a Superior Court case. Additionally, you requested communications among DMV employees that related to "Jarrod Sharp" (yourself). Finally, you requested "the ex parte communication sent by DC DMV to the Superior Court." These requests are nearly identical to your February 14, 2017 request to DMV, which was at issue in FOIA Appeal 2017-24.

The DMV responded to your April 4 and May 20 requests on April 20, 2017, and on April 21, 2017, reminding you of the documents that it had already produced to you in response to your previous request. The DMV further attached additional emails that were retrieved in a subsequent search. These emails consisted primarily of communications generated after your initial FOIA request concerning your FOIA request. The DMV reiterated that no responsive records were found for *ex parte* communications. The DMV also informed you that you remain delinquent in submitting payment for fees the DMV charged you on February 23, 2017, pursuant to 1 DCMR 408.1(c)[2] in connection with your previous FOIA request.

[1] You filed two nearly identical appeals of two nearly identical requests, FOIAXpress matters 2017-FOIA-02501 and 2017-FOIA-02885. It is unclear why. This decision constitutes our response to both appeals.

[2] As noted in FOIA Appeal 2017-24, DMV is authorized under 1 DCMR § 408.1(c) to charge you for your use of DC FOIA. You should note that your failure to pay the $9.00 fee in a timely manner will result in you having to prepay future DC FOIA requests pursuant to D.C. Code § 2-532(b-3).

On April 20, 2017, and April 21, 2017, you appealed the DMV's responses, stating "[w]ithout explanation or legal authority, the DMV continues to refuse to provide the case file that the DMV presented to the court, but failed to provide to petitioner. The denial is attached. Here is the relevant line from DC case search: 12/22/2016 Miscellaneous Docket Records received from the Department of Motor Vehicle Adjudication Services Filed. (1 volume) 2016 CA 007953 T: In The Matter Of: SHARP, JARROD S." You appear to believe that a "case file" exists that DMV transmitted directly to a judge and that DMV has failed to disclose to you.

The DMV provided this Office with a response to your appeals on April 27, 2017.[3] The DMV's response reiterates that it has already disclosed to you all responsive documents pertaining to the notice of infraction and the Superior Court case you requested. Since making your initial request, additional documents have been generated, and these documents have also been provided to you. Regarding the e*x parte* communication you continue to seek, the DMV asserts that no such record exists, and, as we held in FOIA Appeal 2017-24, we accept DMV's representation.

Since you are an attorney, this Office need not remind you as to the precise meaning of an "*ex parte* communication," beyond stating that providing a record to the clerk of court does not constitute an *ex parte* communication. In your appeal you have copied and pasted a section of a docket that purportedly indicates that the DMV filed a record with the clerk of court. It is unclear, however, how this is evidence of an *ex parte* communication between DMV and a judge, or how this is indicative of a "case file" document existing, beyond that which you have received. Your appeal provides no basis for this Office to question DMV's assertions that it has not engaged in *ex parte* communications. It appears that you continue to seek the documents that DMV provided to the court (i.e., the "case file" mentioned in your appeal), but as DMV has informed you at least three times, and as we stated in FOIA Appeal 2017-24, those documents have been transmitted to you.

As this Office held in the decision to FOIA Appeal 2017-24:

> Here, the DMV denies that any ex parte communication was made in the case that is the subject of your request. Regarding your claim that "the Court confirms receipt of the communication," the DMV offers the explanation the the communication received by the court was the file customarily provided to the court's clerk. Additionally, all responsive documents related to the notice of infraction and Superior Court were disclosed, and the DMV queried all of the individual employees named in the request. Therefore, DMV has identified the relevant record repositories likely to contain responsive documents and has searched them. As a result, we conclude that DMV has conducted an adequate search.

FOIA Appeal Decision 2017-24, at 3.

[3] The response consisted of declarations, which are attached.

This Office continues to find DMV's search for records pertaining to you, Jarrod S. Sharp Esq., to be adequate.

Conclusion

Based on the foregoing, we affirm DMV's decisions and hereby dismiss your appeals.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Kelly J. Davis, Assistant General Counsel, DMV (via email)
David Glasser, General Counsel, DMV (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-58

May 8, 2017

VIA ELECTRONIC MAIL

Christopher A. Zampogna

RE: FOIA Appeal 2017-58

Dear Mr. Zampogna:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you challenge the Metropolitan Police Department's ("MPD") response to your request under the DC FOIA.

Background

On November 2, 2016, you submitted a request to MPD for "any and all public records, including, but not limited to, police body cam video, police dash cam video, and any statements of witnesses and those persons" related to a specific traffic accident. On November 4, 2016, MPD bifurcated your request into two portions, one for body-worn camera footage, and the other for the remaining records (e.g., documents and statements). You maintain that initially, MPD produced only a copy of the relevant Traffic Crash Report. As a result, on January 19, 2017, you informed MPD that its production was insufficient. According to your appeal, on March 3, 2017, an MPD FOIA officer instructed you to resubmit your initial request. On March 23, 2017, your office submitted a renewed request for the same records and asked for field notes from other officers who reported to the scene of the accident and interacted with witnesses or accident victims. On March 30, 2017, MPD denied your new request as duplicative.

Following MPD's denial of your second request, you filed an appeal on the grounds that MPD has repeatedly failed to comply with your FOIA requests. On May 2, 2017, MPD sent this Office its response to your appeal.[1] MPD explained that after your request was split into 2 processing numbers, the FOIA technician assigned the requests resigned. The replacement technician reviewed the file and determined that a photograph had mistakenly been omitted and then sent it to you. The MPD advised this Office that to respond to your request, FOIA staff sent a search request to the First Police District, where the traffic accident at issue took place. The First District certified that it conducted a search of paper and electronic files and provided responsive documents to the MPD's FOIA Office.[2] MPD FOIA staff also requested that the main office for

[1] A copy of MPD's response to your appeal is attached.
[2] A copy of the certification is attached.

patrol services and administrative staff conduct a search, which did not yield any additional responsive documents.

Discussion

It is the public policy of the District of Columbia 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). The right to examine public records is subject to various exemptions that may form the basis of 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 Com'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

While the MPD addressed the underlying requests in an unusual procedural manner, the primary issue on appeal is whether the MPD conducted an adequate search for the records you sought. To determine the adequacy of a 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. U.S. 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).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step 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

that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.*

Here, MPD identified the most likely repositories for responsive documents as being the paper and electronic files of the First Police District, where the accident took place, and the main office for patrol services. MPD asserts that searches of those locations were ordered and conducted, and no further responsive records, such as field notes, were found. MPD also advised this Office that if responsive body-worn camera footage existed, it would be maintained at the First District. Therefore, MPD has identified the relevant record repositories likely to contain responsive documents and has searched them. As a result, we conclude that MPD has conducted an adequate search and produced all responsive records.

Conclusion

Based on the foregoing, we affirm the MPD's decision and hereby dismiss your appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-59

May 4, 2017

VIA ELECTRONIC MAIL

Mr. Mark Robinson

RE: FOIA Appeal 2017-59

Dear Mr. Robinson:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that you submitted a request to the Metropolitan Police Department ("MPD") for proof of radar certification or qualification for an MPD contract employee who operated an automated traffic enforcement camera in the District on a specified date. MDP denied your request, asserting privacy exemptions under DC FOIA and stating that because you did not have authorization from the employee to release the certificate, doing so would constitute a "clearly unwarranted invasion of personal privacy."

You appealed MPD's denial, contending that, among other things, the employee's radar certification has been made public by way of the issuance of a notice of infraction, and such training records are a matter of public interest. This Office asked MPD to respond to your appeal, whereupon MPD advised us[1] that it will provide the requested certification to you in accordance with a decision we recently issued with respect to FOIA Appeal 2017-48.[2]

Since MPD has indicated to this Office that it will provide you with the document you have requested, we dismiss your appeal as moot; provided, that MPD shall transmit the document to you within 5 business days of the date of this decision. Further, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to MPD's substantive response.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

[1] A copy of MPD's response is attached.
[2] Our decision in FOIA Appeal 2017-48 addressed a request that is identical to the one at issue here. A copy of that decision is attached.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-60

May 8, 2017

VIA ELECTRONIC MAIL

Mr. Donald Durkee

RE: FOIA Appeal 2017-60

Dear Mr. Durkee:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you challenge the response you received from the Office of Risk Management ("ORM") to a request you submitted under the DC FOIA.

Background

On April 5, 2017, you submitted a FOIA request to ORM for a copy of the inspection report pertaining to a tree located at 3912 Morrison Street, N.W. The inspection report is referenced in notes that Peter Clark, acting director of ORM's Torts Division, entered in an ATS Note Report[1] on January 5, 2017, for a specific claim.[2] You also asked for a copy of any request by ORM for an agency report on the tree since October 22, 2016 similar to a request described by an ORM employee in his ATS note entry of December 6, 2016, concerning a tree at 3908 Morrison Street, N.W.

On April 14, 2017, ORM responded to your request by indicating that it had conducted a search for the information you requested and enclosing records responsive thereto. ORM further stated, "Please note that Mr. Clark's ATS entry does not specify the location of the tree and that ORM . . . has already provided you with all tree inspection reports in your file for [a related claim]. The enclosed documents reflect all requests made to and responses by agencies (including attachments) concerning the falling of the tree formerly located at 3912 Morrison Street, NW."

You appealed ORM's response on the grounds that ORM provided you with 77 email exchanges and attachments, none of which appears to be the 2 reports you requested. As a result, you are uncertain as to whether the documents exist.

[1] ATS is the software program ORM uses to maintain electronic records of claims against the District.

This Office notified ORM of your appeal. ORM subsequently provided us with an explanation of the underlying response you received, in which the agency concluded that "Given the clarification by Mr. Durkee in his appeal that he is only looking for a single tree report – one that relates to 3912 Morrison Street, NW – ORM's response to [his FOIA request] is to be nonresponsive, since that document does not exist in his claim file."[3]

Discussion

It is the public policy of the District of Columbia 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 . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

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). Accordingly, 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).

Adequacy of the Search

We have interpreted your appeal as challenging the adequacy of ORM's search for the records you requested. DC FOIA requires that a search be 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. U.S. 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).

[3] A copy of ORM's response is attached to this decision.

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step 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 that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.*

Your first request sought an inspection report of a City tree at 3912 Morrison Street N.W. that is described in a January 5, 2017 entry made by Peter Clark, acting director of ORM's Torts Division, in the ATS Note Report for a specific claim. ORM provided this Office with a copy of Mr. Clark's ATS entry. The entry provides, in relevant part, "inspectors inspected the tree months prior and found no issues." According to ORM, the original claim at issue indicated 3910 Morrison Street, N.W. as the location of a fallen tree. After Mr. Clark made his January 5, 2017 entry, it was clarified that the tree at 3912 Morrison Street, N.W. had fallen. Mr. Clark's remark that inspectors had observed the tree (located at 3910 Morrison Street, N.W.) and found no issues stems from the fact that ORM had previously received tree reports from the District Department of Transportation pertaining to trees located at 3906 and 3908 Morrison Street, N.W. Thus, Mr. Clark deduced that trees in the nearby vicinity of 3910 Morrison Street, N.W. were inspected and only the trees at 3906 and 3908 were found to be problematic. Mr. Clark's January 5, 2017 ATS entry does not reference an inspection report for a tree located at 3912 Morrison Street, N.W., and ORM accordingly maintains that it does not possess such a report.

Your second request sought a copy of any request by ORM for an agency report on the City tree located at 3912 Morrison Street N.W. since October 22, 2016 "similar to the request for an agency report described by Adnan Suleman in his ATS Note entry of 12/6/2016 concerning a City tree at 3908 Morrison Street NW." In response to your appeal, ORM advised us that the agency made general requests for reports on trees on Morrison Street, N.W. and within a limited area within the neighborhood, which would have included the tree you specified. ORM's requests were provided in the documents the agency disclosed you. In other words, ORM maintains that no tree report or request for a tree report related to 3912 Morrison Street, N.W. exists.

Having reviewed ORM's response to your appeal, as well as Mr. Clark's January 5, 2017 ATS entry, we find that ORM made a reasonable determination as to where the documents you are seeking would be located if they existed. We find that ORM conducted an adequate search for the documents, and we accept ORM's representation that no responsive documents were retrieved.

Conclusion

Based on the foregoing, we affirm ORM's response to your request and hereby dismiss your appeal.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Robert Preston, ORM (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-61

May 9, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod S. Sharp, Esq.

RE: FOIA Appeal 2017-61

Dear Mr. Sharp:

This letter responds to the twenty-second administrative appeal that you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), alleging that the Metropolitan Police Department ("MPD") failed to respond to a request you submitted to MPD.

In specific, you contend that on March 17, 2017, MPD received a FOIA request from you for "[a]ny and all records related to the theft of Honda Civics in and around March 2002 in the Dupont Circle area of Washington DC." You have appealed because you have received no response from MPD for this request. This Office notified MPD of your appeal, and MPD responded by indicating that the MPD "FOIA office is presently waiting for the responsible unit in the department to complete the search for responsive documents."[1] MPD staff is currently searching for records and advised this Office that it expects to provide a response to you today or tomorrow, apprising you of the status of the search.

The failure of a public body to comply with a request within the statutory timeframe shall be deemed a denial of the request under D.C. Official Code § 2-532(e). When an agency fails to disclose a public record, the Mayor shall compel the agency to do so. *See* D.C. Official Code § 2-537. Here, MPD has indicated to this Office that it is searching for responsive documents and that it will send you a response when it has completed its search of documents.

Based on this representation, we remand this matter to MPD to complete its search, review the documents, and provide you with non-exempt documents[2]. We dismiss your appeal, provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to MPD's substantive response.

[1] A copy of MPD's response is attached.
[2] Provided, of course, that any fees related to the request are prepaid. *E.g.* D.C. Official Code §2-532(b-3); FOIA Appeals 2017-56 & 2017-57 (noting your failure to pay a DC FOIA fee in a timely manner.).

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-62

May 10, 2017

VIA ELECTRONIC MAIL

Jarrod S. Sharp, Esq.

RE: FOIA Appeal 2017-62

Dear Mr. Sharp:

This letter responds to the twenty-third administrative appeal that you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA").

You contend here that on March 17, 2017, you submitted a request to the Metropolitan Police Department ("MPD") for "any and all documents that refer and/or relate to the Supreme Court case D.C. v. Heller," and MPD failed to respond to your request within the statutory timeframe under DC FOIA.

MPD advised this Office that it responded to your request via email on May 8, 2017, indicating that the cost of searching for the records is $240,000. MPD also informed you that it is requiring an advance payment, as authorized by D.C. Official Code § 2-532(b-3).[1]

Your appeal was based on MPD's failure to respond to your request, and MPD has now responded with a fee estimate and an appropriate requirement of prepayment. As a result, we consider your appeal to be moot and hereby dismiss it. Should you prepay for and obtain responsive documents, you are free to assert any challenge as to the substance of the documents by separate appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

[1] This statute provides that an agency may require advance payment of a fee if the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250. Both of these circumstances apply here. *See* FOIA Appeals 2017-56, 2017-57, and 2017-61.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-63

May 10, 2017

VIA ELECTRONIC MAIL

Mr. Kel McClanahan

RE: FOIA Appeal 2017-63

Dear Mr. Sharp:

This letter responds to the administrative appeal that you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the District of Columbia Office on Aging ("DCOA") improperly denied a request you submitted on behalf of your clients.

After you filed your appeal,[1] DCOA informed our Office that "In light of the Court of Appeals recent decision . . . DCOA does not intend to file a response [to your appeal]." DCOA indicated that it will instead process the request.

An agency withholding public records has the burden of justifying that withholding. *See* 1 DCMR § 412.5. Here, DCOA has chosen to not defend its withholding. As a result, this Office remands this matter to DCOA and orders it to produce documents on a rolling basis beginning immediately, pursuant to D.C. Official Code § 2-537(a)(2).

Your appeal is hereby dismissed; provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to DCOA's substantive response.

If you are dissatisfied with this decision you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Michael Kirkwood, General Counsel, DCOA (via email)

[1] It should be noted that while your appeal is dated April 28, 2016, it was not received by this Office until April 26, 2017.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-64

May 4, 2017

VIA ELECTRONIC MAIL

Mr. John McFarland

RE: FOIA Appeal 2017-64

Dear Mr. McFarland:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, dated April 23, 2017, you request that the Mayor compel the DC Department of Human Resources ("DCHR") to fulfill the FOIA request you submitted to DCHR on April 10, 2017.

Pursuant to D.C. Official Code § 2-532(c)(1), a public body must respond to a DC FOIA request within 15 business days of the receipt of the request. In certain circumstances, a public body may extend its response time by an additional 10 business days. D.C. Official Code § 2-532(d). The initial 15-business day time period had not expired when you filed the instant appeal, therefore rendering it premature. Moreover, DCHR has advised this Office that subsequent to your filing the appeal, DCHR notified you of the results of the search you requested. You then amended your request in correspondence to DCHR on April 30, 2017.

In light of the foregoing, this Office dismisses your appeal on the grounds that it was prematurely filed. This dismissal shall be without prejudice to you to file a separate appeal if DCHR improperly responds or fails to respond to your amended request after the statutory deadline.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Leah N. Brown, Attorney-Advisor, DCHR (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-66

May 10, 2017

VIA ELECTRONIC MAIL

Jarrod S. Sharp, Esq.

RE: FOIA Appeal 2017-66

Dear Mr. Sharp:

This letter responds to the twenty-fourth administrative appeal that you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA").

You contend here that on March 20, 2017, you submitted a request to the Metropolitan Police Department ("MPD") for any and all emails sent or received by a specific MPD employee that "include the text 'Jarrod Sharp' or its derivatives" from January 1, 2017 to the present. As of the date of your appeal, MPD had not responded to your request.

MPD advised this Office that it responded to your request on May 4, 2017, asserting its position that a search for and release of documents about a third party, absent authorization from the third party, would constitute a clearly unwarranted invasion of personal privacy under the DC FOIA. MPD asked you to provide proof of identity for yourself, the third party referenced in the documents you seek.

Your appeal was based on MPD's failure to respond to your request, and MPD has now responded.[1] As a result, we consider your appeal to be moot and hereby dismiss it. Should you obtain responsive documents from MPD, you are free to assert any challenge as to the substance of the documents by separate appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

[1] We will not address the substance of MPD's response at this juncture since you have not appealed it; however, we have previously considered similar privacy issues, most recently in FOIA Appeal 2017-21.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-67

May 19, 2017

VIA ELECTRONIC MAIL

Dalvaro K. Weaver

RE: FOIA Appeal 2017-67

Dear Mr. Weaver:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you challenge the response you received from the Department of Human Services ("DHS") to your request for records related to the 801 East Shelter.[1]

Background

On March 25, 2017, DHS received your request for records related to the 801 East Shelter. In its response, on April 24, 2017, DHS acknowledged 15 subparts of your request and asserted that it did not possess any records responsive to your request.

On May 4, 2017, your appeal was received by this Office. In your appeal, you assert that DHS must have at least some records responsive to your request because the 801 East Shelter is operated by the Catholic Charities of the Archdiocese of Washington ("Catholic Charities") pursuant to a contract with DHS. Additionally, you assert that the records are likely maintained and should be reported because the subject matter is in the public interest.

On May 18, 2017, DHS provided this Office with a written response to your appeal.[2] DHS' response explains that after further review it determined three agency divisions that may have access to responsive records: the Family Services Administration ("FSA"), Homeless Services Program ("HSP"), and Office of Program Review, Monitoring and Investigation ("OPRMI"). The FSA and HSP oversee DHS' vendor, the Community Partnership for the Prevention of Homelessness, of which Catholic Charities is a subcontractor. DHS explained that OPRMI,

[1] The FOIA request you attached to your appeal appears different from both the request DHS described in its denial letter and the one you described in your appeal; this determination will address the request as described in DHS' denial letter and your appeal. Additionally, your appeal references FOIA requests submitted to the Department of General Services and Catholic Charities; this determination will address only your appeal of DHS' denial because that is the only appeal for which you provided any information.
[2] DHS simultaneously sent you a copy of its response.

which performs monitoring of shelters and internal affairs, may also have responsive records. DHS provided a message from Catholic Charities indicating that Catholic Charities did not believe itself to be subject to FOIA. DHS concluded by requesting additional time to conduct its search and review its contractual relationship with Catholic Charities.

Discussion

It is the public policy of the District of Columbia 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 . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

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). Accordingly, 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).

Adequacy of Search

The primary issue raised in your appeal is whether DHS conducted an adequate search for the records at issue. 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. U.S. 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).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step 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 that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

DHS' initial response to your request did not provide sufficient detail for this Office to determine whether the agency conducted an adequate search. DHS' response to your appeal indicates that upon further review, DHS identified the appropriate repositories for responsive records and is in the process of searching those locations. As a result, DHS is in the process of completing an adequate search.

One complicating factor is that Catholic Charities, a subcontractor of DHS' vendor TCP, potentially maintains records responsive to your request. Under D.C. Official Code § 2-532(a-3), "[a] public body shall make available for inspection and copying any record produced or collected pursuant to a contract with a private contractor to perform a public function . . .." As a result, DHS must review the contracts with TCP and Catholic Charities to determine if, pursuant those contracts, records responsive to your request have been produced or collected.

Creating New Records

We note that the subparts of your request more closely resemble interrogatories or requests for DHS to create new records than a request for public records. An adequate search does not require FOIA officers to act as personal researchers on behalf of requesters. *See, e.g., Bloeser v. DOJ*, 811 F. Supp. 2d 316, 321 (D.D.C. 2011) ("FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters…"). DHS has no obligations under FOIA to create a new record or to answer interrogatories. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency "has no duty either to answer questions unrelated to document requests or to create documents."). 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). As a result if the records do not already exist, DHS is not obligated to create the specific compilations of information you requested.

Conclusion

Based on the foregoing, we remand this matter to DHS. Within 10 business days of this decision, DHS shall: (1) conduct the additional search it described in response to your appeal; and (2) send you a supplemental response describing the subsequent search and provide you with any non-exempt responsive records.

This appeal is hereby dismissed; provided, that the dismissal is without prejudice. You are free to challenge DHS' subsequent response in a separate appeal to this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Robert C. Warren, Jr., Assistant General Counsel, DHS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-68

May 10, 2017

VIA ELECTRONIC MAIL

Mr. Robert Hornstein

RE: FOIA Appeal 2017-68

Dear Mr. Hornstein:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you challenge the response you received from the Department of Youth Rehabilitation Services ("DYRS") to your request for monitoring reports, protocols, policies, and procedures for residential placements where DYRS has placed committed youth.

Background

On June 28, 2016, you submitted a request to DYRS for documents relating to DYRS placement of committed youth. In response, on February 13, 2017, DYRS granted your request in part and denied your request in part. DYRS denied part of your request and withheld responsive documents pursuant to the deliberative process privilege.

On April 26, 2017, your appeal was received by this Office. In your appeal, you assert that DYRS improperly invoked the deliberative process privilege, that it did not conduct an adequate search, and that it failed to produce a *Vaughn* index.[1] Specifically, you contend on information and belief that the lack of any documents relating to the Florida Institute for Neurologic Rehabilitation ("FINR") is indicative of an inadequate search.

DYRS provided this Office with a written response to your appeal, explaining that all previously withheld records have since been provided to you. DYRS asserted that when it initially responded to your request the responsive documents were still in draft form, but the documents have since been finalized and disclosed to you. Upon a follow up conversation with this Office, DYRS described the search that it conducted and explained that it has provided you with an

[1] Under DC FOIA, agencies are not required to create a *Vaughn* index at the initial administrative denial. *Judicial Watch, Inc. v. Clinton*, 880 F. Supp. 1, 11 (D.D.C. 1995) ("Agencies need not provide a Vaughn Index until ordered by a court after the plaintiff has exhausted the administrative process."), aff'd on other grounds, 76 F.3d 1232 (D.C. Cir. 1996). However, agencies are required to explain why they are withholding each record in sufficient detail. 1 DCMR § 407.2(b).

additional document related to FINR. DYRS proffered to this Office that this production was gratuitous as "[i]t is not a monitoring report created by DYRS, and so is not directly responsive to any request made by the Requester, but rather was a document sent to DYRS by FINR relating to an allegation of improper use of force made by a youth who is placed there."

Discussion

It is the public policy of the District of Columbia 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 . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

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). Accordingly, 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).

Adequacy of the Search

One of the issues raised in your appeal is whether DYRS conducted an adequate search for the records at issue. 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. U.S. 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).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step 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 that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

This Office agrees with you that DYRS's search was inadequate. DYRS's response to this Office described the search that it conducted, which resulted in the discovery of a document that "is not a monitoring report created by DYRS, and so is not directly responsive to any request made by the Requester, but rather was a document sent to DYRS by FINR. . . ." This description of DYRS' search suggests that the agency may not have properly construed your request. Your request appears to be for all responsive records in the possession of DYRS and is not limited to documents created by DYRS. As a result of DYRS's interpretation of your request, it is not clear that DYRS has identified all likely record repositories where responsive records would be located if they existed.

Deliberative Process

DYRS has represented that it has provided to you all of the records that it previously withheld under the deliberative process privilege. This Office accepts DYRS's representation. As a result, this Office finds that the portion of your appeal dealing with the deliberative process privilege is moot.

Conclusion

Based on the foregoing, we affirm DYRS' decision in part and remand it in part. Within 10 days of this decision, DYRS shall: (1) conduct an additional search for all responsive records maintained by the agency, including those DYRS did not create; and (2) send you a supplemental response describing the subsequent search and any documents it yielded.

This appeal is hereby dismissed; provided, that the dismissal is without prejudice. You are free to challenge DYRS' subsequent response in a separate appeal to this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ryan Miller, Assistant General Counsel, DYRS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-69

May 15, 2017

VIA EMAIL

Ms. Jessica Steinberg

RE: FOIA Appeal 2017-69

Dear Ms. Steinberg:

This letter responds to the administrative appeal submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In the appeal, you assert that the Metropolitan Police Department ("MPD") did not adequately respond to requests for records, submitted on behalf of your clients, under the DC FOIA.

Background

On February 16, 2017, and March 1, 2017, your office submitted two FOIA requests, on behalf of two clients, to MPD seeking arrest report records related to your clients. On March 7, 2017, and March 16, 2017, denied both requests, citing to D.C. Code § 2-534(a)(3)(A)(i) ("Exemption 3").

This appeal challenges MPD's use of Exemption 3. The appeal argues that an early termination of parole hearing is not an enforcement proceeding, and if it were MPD has not proven that release of the records would interfere with the enforcement proceeding. The appeal cites to federal law and regulation which grant a right to be "apprised of the evidence" against your clients, such that release of such information could not interfere with the proceedings. Further, the appeal argues that even if parts of the records would interfere, MPD has a duty to segregate exempt portions instead of withholding the entire record.

MPD provided this Office with a response to your appeal.[1] In its response, MPD reasserts that the documents are protected from disclosure under Exemption 3, asserting that the parole proceedings are enforcement proceedings because they determine the imposition of sanctions. MPD notes that your appeal "correctly notes. . . that the federal regulations provide for [your] clients to 'be apprised of the evidence' used against them in the hearings. The regulations make no mention of using the FOIA process to obtain the evidence." Finally, MPD notes that your clients could "tailor his or her testimony upon receiving the requested records that could inform the hearing panel of activities that have occurred subsequent to the underlying charges."

[1] A copy of MPD's response is attached.

Discussion

It is the public policy of the District of Columbia 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 . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

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). Accordingly, 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).

Interference with Enforcement Proceedings

On appeal MPD has cited to Exemption 3. Because of the broad nature of Exemption 3, and absent being offered specific case law to the contrary, this Office accepts MPD's argument that a parole early termination hearing is an enforcement proceeding for Exemption 3 purposes.

However, in order to withhold an investigatory record a release must foreseeably harm an enforcement proceeding. *Crooker v. ATF*, 789 F.2d 64, 65-67 (D.C. Cir. 1986) (finding that agency failed to demonstrate that disclosure would interfere with enforcement proceedings). MPD's arguments that this request is "an effort to obtain records outside the discovery process," is not persuasive. *North v. Walsh*, 279 U.S. App. D.C. 373, 881 F.2d 1088, 1099 (1989) ("FOIA rights are unaffected by the requester's involvement in other litigation; an individual may therefore obtain under FOIA information that may be useful in non-FOIA litigation, even when the documents sought could not be obtained through discovery . . . ."). MPD's response imply that your clients would be entitled to the withheld documents, had they requested them pursuant to the Parole Act[2].

If your clients would be entitled to these documents under the law that creates the enforcement proceeding, then it is difficult to see how MPD's release of these documents to your clients would interfere with that enforcement proceeding. As a result, we find that MPD has not sufficiently described the potential interference to enforcement proceedings to allow withholding the responsive records in their entirety. Further, it does not appear that MPD addressed the segregability of the withheld records, whether portions may be disclosed without causing the harms contemplated under Exemption 3.

Conclusion

[2] Indeed, it would appear that 28 C.F.R. § 2.89 ("Miscellaneous provisions") incorporates 28 CFR § 2.56 ("Disclosure of Parole Commission file") to apply to District of Columbia Code offenders.

Based on the foregoing, we remand MPD's decision. Within 10 business days from the date of this decision, MPD shall either: (1) provide you with previously withheld records; or (2) clarify to you by letter the nature of each withheld record, the particular harm release of that record would cause, and explain if redaction is not feasible. This constitutes the final decision of this Office; you may file a separate appeal for a subsequent denial.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ron Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-70

May 12, 2017

VIA ELECTRONIC MAIL

Jarrod S. Sharp, Esq.

RE: FOIA Appeal 2017-70

Dear Mr. Sharp:

This letter responds to the twenty-fifth administrative appeal you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you appeal the response of the Metropolitan Police Department ("MPD") to your request for records relating to "an unsigned and undated affidavit" that you claim a specific MPD employee provided to the Executive Office of the Mayor in March or April 2017.

On April 10, 2017, you submitted a FOIA request to MPD for "any and all records that relate, discuss, and/or include an unsigned and undated affidavit allegedly provided by [a named MPD employee] to attorneys at the Executive Office of the Mayor in either March or April 2017." MPD responded to your request by stating that the named employee did not provide any unsigned or undated affidavits to attorneys at the Executive Office of the Mayor ("EOM") during the relevant time period. As a result, MPD advised you that no responsive records exist.

You appealed MPD's response by attaching a copy of what you contend is the "unsigned and [sic] affidavit" that the MPD employee at issue provided to the EOM. This Office notified MPD of your appeal. MPD responded by explaining that the underlying document about which you are seeking records is not an affidavit; it is a statement.[1] MPD explained that the statement was not purported to be made under oath or penalties of perjury and noted that MPD presumes you understand the distinction between a statement and an affidavit since you have represented that you are an attorney.

It is the public policy of the District of Columbia 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 . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

[1] A copy of MPD's response is attached.

There is no dispute here as to the underlying document about which you are seeking records. MPD's FOIA Officer submitted a document to this Office in response to FOIA Appeal 2017-37, which you filed in March 2017. The document is a description by MPD's FOIA Officer of his role vis a vis FOIA appeals and the search that was the subject of your request in FOIA Appeal 2017-37. In our decision there, we characterized the document as "the FOIA officer's statement," and we provided a copy to you.[2] None of the attorneys in this Office, which adjudicated all FOIA appeals in March and April 2017, received an "unsigned and undated affidavit" from MPD during the relevant time period. As a result, we need not engage in an analysis of whether MPD's search was adequate; no records exist relating to an "unsigned and undated" affidavit because no such document was provided to this Office.

Based on the foregoing, we affirm MPD's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

[2] You responded in an email dated April 6, 2017, "The purported statement appears to be unsigned and undated."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-71

May 16, 2017

VIA ELECTRONIC MAIL

Mr. Fritz Mulhauser

RE: FOIA Appeal 2017-71

Dear Mr. Mulhauser:

This letter responds to the administrative appeal that you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), alleging that the Metropolitan Police Department ("MPD") failed to respond to a request you submitted to MPD.

On March 12, 2017, you submitted a request to MPD for "(1) the study design or plan, (2) data collection instruments in use in the study, (3) any record identfiying [sic] the principal investigator and performing organization that is doing the study, and (4) any interim or progress reports -- all related to the MPD study of the results of equipping patrol officers with body worn cameras." You have appealed because you have received no response from MPD for this request – beyond a statement that MPD had "no reply from the searching unit."

This Office notified MPD of your appeal, and MPD responded that it had identified responsive documents but was still seeking internal approval for their release. Further, MPD advised this Office that its staff is currently waiting for approval to release and it expects to provide a response to your request soon.

The failure of a public body to comply with a request within the statutory timeframe shall be deemed a denial of the request under D.C. Official Code § 2-532(e). When an agency fails to disclose a public record, the Mayor shall compel the agency to do so. *See* D.C. Official Code § 2-537. Here, MPD has indicated to this Office that it has completed searching for responsive documents and will send you a response to your request when it has completed its review.

Based on this representation, we remand this matter to MPD to within 5 days of this decision: review the responsive documents, and provide you with all non-exempt portions. We dismiss your appeal, provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to MPD's substantive response.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-72

May 17, 2017

VIA ELECTRONIC MAIL

Jarrod S. Sharp, Esq.

RE: FOIA Appeal 2017-72

Dear Mr. Sharp:

This letter responds to two administrative appeals that you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), asserting that the Metropolitan Police Department ("MPD") improperly closed and failed to respond to DC FOIA requests you submitted on April 27, 2017, and April 6, 2017, respectively. For the reasons discussed below, we have consolidated these appeals.

On April 6, 2017, you sent a request to MPD for "all MPD e-mails that were sent to or received from [a named employee of the Mayor's Office of Legal Counsel] and/or [another named employee of the Mayor's Office of Legal Counsel] since 1 Jan 2017." On April 27, 2017, you requested "all MPD e-mails that were sent to or received from [the same two employees of the Mayor's Office of Legal Counsel] between March 20, 2017 and April 1, 2017." MPD appropriately closed your second request because the time frame you specified in the first request encompassed the time frame specified in the second request.

MPD provided this Office with a response to your appeals on May 12, 2017.[1] In its response, MPD explained why it closed your second request. MPD also indicated that it had suspended further processing of your first request because you failed to commit to paying applicable fees associated with searching for and producing the documents you are seeking.

D.C. Official Code § 2-532(b-3) provides that an agency can require advance payment of fees in two situations: (1) when it has been determined that a fee will exceed $250; and (2) when a "requester has previously failed to pay fees in a timely fashion." This Office is not aware of any authority that allows an agency to suspend processing a FOIA request until a requester commits to paying applicable fees. However, you have failed to timely pay fees incurred by the processing of your previous FOIA requests, as noted in FOIA Appeals 2017-56, 2017-57, 2017-61, and 2017-62. Therefore, MPD may require advance payment from you here, as authorized by D.C. Official Code § 2-532(b-3).

[1] A copy of MPD's response is attached.

Based on the foregoing, MPD's decision is affirmed in part and remanded in part. Within 10 business days of this decision MPD shall provide you with a reasonable estimate of fees associated with responding to your first request. MPD need not process your request until it receives advance payment of those fees from you.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-73

May 18, 2017

VIA E-MAIL

Mr. Christopher LaFon

RE: FOIA Appeal 2017-73

Dear Mr. LaFon:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Alcohol Beverage Regulation Administration ("ABRA") improperly withheld and redacted records you requested on behalf of your client under the DC FOIA.

Background

In a letter dated February 22, 2017, you submitted a FOIA request to ABRA for records of communications between a complainant and ABRA.

On April 19, 2017, ABRA responded to your request by providing a number of partially redacted documents and withholding other documents. ABRA cited to D.C. Official Code § 2-534(a)(3)(C) ("Exemption 3(C)") and D.C. Official Code §2-534(a)(2) ("Exemption 2") as the bases for its redactions and withholdings.

On appeal you challenge the ABRA's partial denial, asserting the ABRA improperly withheld and redacted records. You assert the existence of a public interest in the records based on your client's right to review the documents before ABRA considers whether to renew the liquor license associated with your client's establishment. Allowing your client to review the records would, you contend, allow him to cross-examine his accusers. For these reasons, you object to the redaction and withholding of "the substance of the complaints" against your client's establishment.

ABRA sent this Office a response to your appeal on May 5, 2017,[1] in which the agency reaffirmed its position that it properly withheld and redacted certain records under Exemptions 2 and 3(C). ABRA argued primarily that: (1) the records at issue were properly withheld and redacted pursuant to Exemption 3(C); (2) your appeal did not adequately challenge Exemption 3(C) such that you have waived that argument;[2] and (3) you have not identified a legally

[1] A copy of ABRA's response is attached. ABRA also attached additional responsive records that it recently identified. We direct ABRA to provide them to you directly.
[2] This Office has historically construed appeals as broadly as possible and does not consider your

cognizable public interest as contemplated under the DC FOIA to overcome any personal privacy concerns associated with the records.

Discussion

It is the public policy of the District of Columbia 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).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal stature are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Investigatory Records

Exemptions 2 and 3(C) of the DC FOIA relate to personal privacy. Exemption 2 applies to "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." 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." While Exemption 2 requires that the invasion of privacy be "clearly unwarranted," the word "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 Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

Here, ABRA has briefed this Office primarily on Exemption 3(C) and has posited that because all of the redacted and withheld documents are exempt under Exemption 3(C), this Office need not reach an analysis of Exemption 2. We disagree with ABRA's premise that the withheld and redacted documents should be evaluated under Exemption 3(C).

Records that ABRA compiles for law enforcement purposes and that pertain to investigations ABRA conducts are exempt from disclosure under Exemption 3(C) if the investigations focus on acts that could, if proven, 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). *See also Rugiero v. United States Dep't of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well.").
It is without question that ABRA has legal authority over enforcement of this area of regulation. What is not clear is that the redacted and withheld records are "investigatory records compiled for law enforcement purposes." *See* Exemption 3. It does not appear that ABRA solicited the

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objection to redactions and withholdings under Exemption 3 to have been waived.

information in the emails from the complainant as part of investigative activity.[3] *Tax Analysts v. IRS*, 294 F.3d 71, 78 (2002) (internal citations omitted). ("the court set forth a two-part test whereby the government can show that its records are law enforcement records: the investigatory activity that gave rise to the documents is 'related to the enforcement of federal laws,' and there is a rational nexus between the investigation at issue and the agency's law enforcement duties.") *FOP, Metro. Labor Comm. v. District of Columbia*, 82 A.3d 803, 814-15 (D.C. 2014) ("the phrase 'investigatory records compiled for law enforcement purposes' in exemption 3 [of the District's FOIA] refers only to records prepared or assembled in the course of 'investigations which focus directly on specifically alleged illegal acts").

Instead, the majority of the emails appear to be complaints sent by an individual to ABRA asking the agency to take certain actions against a commercial establishment. The withheld and redacted records do not appear to have been gathered by ABRA in conjunction with an investigation.[4] In fact, ABRA's FOIA officer conveyed to this Office that many of the emails were received during a time in which ABRA was not investigating the matter. The FOIA Officer further indicated that ABRA compiled the responsive emails in direct response to your FOIA request, and that the documents were not already compiled as part of an investigative file. As a result, these documents should not be evaluated under the standard of Exemption 3.

Personal Privacy Interest

Because this Office does not agree that the bulk of withheld and redacted records qualify as being a part of "investigatory records compiled for law-enforcement purposes . . ." this Office instead analyzes the privacy interest at issue here under the "clearly unwarranted" standard of Exemption 2.

Determining whether disclosure of a record would constitute an unwarranted invasion of personal privacy requires a balancing of one's individual privacy interests against the public interest in disclosure. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 756.; *see also Abraham & Rose, P.L.C. v. United States*, 138 F.3d 1075, 1083 (6th Cir. 1998) (stating that clear privacy interest exists with respect to names, addresses, and other identifying information, even if it is already available in other public filings).

Because of the voluminous nature of the withheld records, this Office will not opine on each email at this point but will instead offer general guidance to ABRA to consider in reevaluating its redactions and withholdings. After reviewing a representative sampling of the withheld and

[3] If these records were created in connection with a complaint submitted to ABRA's hotline, then those would be more likely to be subject to withholding under Exemption 3, because it would entail at least a passive investigative activity. Alternatively, if ABRA had a designated email address or website for the public to submit anonymous complaints for the purpose of initiating investigation, those communications might be subject to Exemption 3 and trigger a privacy interest.

[4] Indeed, this would appear to be why ABRA is not asserting that release of the records would "[i]nterfere with . . . [an] Enforcement proceeding . . ." pursuant to D.C. Official Code § 2-534(a)(3)(i).

redacted emails, it is not clear that the substantive portions that were withheld and redacted contain information that would constitute an unwarranted invasion of privacy if released. For example, the complainant's requests for an investigation and updates on the investigation do not appear to raise a privacy interest. Similarly, the complainant offering unsolicited directions as to the way that ABRA should conduct an investigation is not traditionally associated with the concept of "personal privacy."[5] Instead, it seems that the complainant, through emails, was petitioning his government for redress of a community problem. In one email the complainant states, "Let this email serve as another record of our complaint." In other emails the complainant writes as if speaking on behalf of himself and his neighbors. We glean from this that the complainant intended for his emails to serve as a "record" and not as a private disclosure with an expectation of privacy.

Other emails that we reviewed, such as requests from the complainant for inspection reports, do not appear to raise a privacy interest. Nor do statements by the complainant describing the actions taken by ABRA[6] or the complainant's thoughts on those actions.

Some redactions in the emails involve a corporate website and email domain. Under DC FOIA a corporation has no personal privacy interest, because legal fictions do not possess personal privacy.[7] *FCC v. AT&T Inc.*, 562 U.S. 397, 409-410 (2011) ("When it comes to the word 'personal,' there is little support for the notion that it denotes corporations, even in the legal context.").

Lastly, because your request was for emails sent or received by a specified complainant, it is unclear what personal privacy is maintained by redacting the name of the complainant from the "to" and "from" lines of the emails. If the emails were not sent or received by the complainant, they would not be responsive to the request. Therefore, there is no need to redact the complainant's name.

Public Interest

With regard to the second part of the privacy analysis under Exemption 3(C), we examine whether any individual privacy interest associated with the redacted and withheld records is outweighed by the public interest in disclosure. In order for a document's release to be in the public interest under DC FOIA, the release must further the statutory purpose of DC FOIA:

[5] If release of these complaints would risk the disclosure of "the identity of a confidential source," ABRA may cite to D.C. Official Code § 2-534(a)(3)(D), though it is unclear here if the complainant would qualify as a "confidential source."
[6] If these communications revealed ABRA's investigative techniques, ABRA may cite to D.C. Official Code § 2-534(a)(3)(E), though the withheld records do not appear to contain a level of detail to qualify for that exemption.
[7] That the complainant used a business email address to make personal requests of the government does not give the company a personal privacy interest to warrant redactions of the company's website and email domain.

> This statutory purpose is furthered by disclosure of official information that "sheds light on an agency's performance of its statutory duties." *Reporters Committee,* 489 U.S. at 773; *see also Ray,* 112 S. Ct. at 549. Information that "reveals little or nothing about an agency's own conduct" does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee,* 489 U.S. at 773. The identity of one or two individual relatively low-level government wrongdoers, released in isolation, does not provide information about the agency's own conduct.

Beck v. Department of Justice, et al., 997 F.2d 1489 (D.C. Cir. 1993) at 1492-93.

On appeal, you assert that there a public interest in the records because of your client's right to cross-examine. This argument is inapplicable to the instant matter; the right to cross-examine a witness is not a public interest recognized by DC FOIA. A requester's identity and involvement in litigation relating to the request are well established as irrelevant in the FOIA context. *North v. Walsh*, 881 F.2d 1088, 1099 (D.C. Cir. 1989) ("FOIA rights are unaffected by the requester's involvement in other litigation; an individual may therefore obtain under FOIA information that may be useful in non-FOIA litigation, even when the documents sought could not be obtained through discovery . . . ."). Nevertheless, because we are remanding this matter to ABRA to reevaluate its personal privacy analysis, we need not examine your stated public interest at this juncture.

Conclusion

Based on the foregoing, we affirm in part and remand in part ABRA's decision. Within 10 business days from the date of this decision, ABRA shall: (1) provide you with its supplemental response; (2) review the withheld and redacted documents under the privacy standard of Exemption 2; and (3) make additional disclosures as necessary in accordance with the guidance offered herein. You may file a separate appeal to challenge ABRA's subsequent response.

This shall constitute the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Jessie Cornelius, Public Information/FOIA Officer, ABRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-74

May 17, 2017

VIA ELECTRONIC MAIL

Shermineh Jones

RE: FOIA Appeal 2017-74

Dear Ms. Jones:

This letter responds to the appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA") on the grounds that the Office of Unified Communications ("OUC") failed to respond to a request you submitted for a specific 911 recording.

This Office notified OUC of your appeal, and OUC advised us that it responded to your request on May 10, 2017. Since your appeal was based on OUC's failure to respond to your request and OUC has now responded, we consider your appeal to be moot and hereby dismiss it. You are free to assert any challenge as to the substance of OUC's response by separate appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Tammie Creamer, OUC (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-75

May 24, 2017

VIA ELECTRONIC MAIL

Moses V. Brown, Esq.

RE: FOIA Appeal 2017-75

Dear Mr. Brown:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA") on behalf your client. In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

On April 4, 2017, you submitted a request to MPD seeking all records, including telephone calls with dispatch, videos, and inspection reports, related to a particular criminal matter involving your client, the victim in the criminal matter. MPD responded to you on April 19, 2017, by granting your request in part and denying it in part. MPD granted your request in part by providing you with some documents. It denied your request in part by redacting portions of documents (i.e., names and telephone numbers of witnesses and other involved parties) under D.C. Official Code § 2-534(a)(2) ("Exemption 2") and withholding documents under D.C. Official Code § 2-534(a)(3)(C) ("Exemption 3(C)").

You appealed MPD's response to the Mayor on the grounds that your client has filed a civil suit against the defendant in the underlying criminal matter, and "[a] release of all records collected during the investigation of that criminal charge allows the victimization of my client to cease." You further contend that releasing the requested records will neither prejudice the defendant nor impede any ongoing criminal case, as none exists.

At the request of this Office, MPD sent us a response to your appeal.[1] MPD maintains its position on the withholding of the documents. MPD asserts that witnesses and suspects in the underlying criminal matter have a significant privacy interest associated with the records, as does the defendant who was arrested and acquitted after trial. In addition, MPD contends that you have not asserted a public interest in the documents that would shed light on MPD's actions vis a vis its investigation of the incident. Thus, according to MPD, there is no public interest that outweighs the individual privacy interests at issue here. MPD also provided this Office with

[1] MPD's response is attached to this decision.

redacted and unredacted versions of the responsive records for *in camera* review. Finally, MPD noted that the remaining responsive documents in its possession are recordings of an interview MPD conducted with your client, which was disclosed to you, and an interview MPD conducted with the defendant, which MPD withheld.

Discussion

It is the public policy of the District of Columbia 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). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, 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 primary issue in this appeal is whether MPD appropriately applied Exemptions 2 and 3(C) to prevent the disclosure of information that would constitute an unwarranted invasion of privacy.

Exemption 2 provides 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." Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis is determining whether a sufficient privacy interest exists. *Id*.

Similarly, Exemption 3(C) exempts disclosure of information contained in "[i]nvestigatory records compiled for law-enforcement purposes" that would "[c]onstitute an unwarranted invasion of privacy." Exemption 3(C) lacks the key word "clearly" that is contained in Exemption 2, and therefore is a stronger privacy privilege. After reviewing the responsive records *in camera*, this Office finds that the standard of Exemption 3(C) applies because the records were compiled for law enforcement purposes in response to your client's criminal complaint.

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Moreover, there is a sufficient privacy interest in recorded witness statements. *See Fitzgibbon v. CIA*, 911 F.2d 755, 767 (1990)

(finding a "'strong interest' of individuals, whether they be suspects, witnesses, or investigators, 'in not being associated unwarrantedly with alleged criminal activity.'").

After comparing an unredacted copy of the responsive records with the redacted copy you received, this Office finds that there is a substantial privacy interest associated with a majority of the redacted material, which involved personally identifiable information such as names, home addresses, and phone numbers. Some of the information MPD redacted, however, does not appear to involve privacy interests. For example, the incident address,[2] job titles of witness, number of years witnesses worked in their positions, and the page numbers of reports involve no or questionable privacy interests. Additionally, this Office notes that MPD's practice of redacting in white is not a best practice, as it makes it difficult to determine where redactions have been made.

Regarding the pages of the responsive records that were withheld entirely, it appears that MPD's motive was to streamline production rather than protect privacy interests. The majority of withheld pages involve limited, duplicative, transmittal, or administrative information rather than personal privacy interests. To the extent that exemptions do apply, under D.C. Official Code § 2-534(b) MPD has a duty to segregate exempt portions instead of withholding entire pages of responsive records. Further, some of the withheld pages involve email exchanges of an MPD officer clarifying his investigation; these exchanges cannot be withheld in their entirety pursuant to the personal privacy protections under Exemptions 2 or 3(C). To the extent these emails involve privacy interests that information can be redacted. If MPD has another basis for withholding the emails in their entirety, MPD must articulate that reason in accordance with DC FOIA.

For the portions of the records where a substantial privacy interest exists, the second part of a privacy analysis examines whether the individual privacy interest is outweighed by the public interest. The Supreme Court has stated that this analysis must be conducted with respect to the central 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

[2] Here, the incident address appears to be a business address rather than a personal address. Generally, FOIA's privacy protection applies only to individuals, not businesses. *See FCC v. AT&T Inc.*, 562 U.S. 397, 410 (2011). However, the redaction of business names and addresses has been upheld when necessary to protect the privacy interests of individuals to be safe from physical violence. *See Judicial Watch, Inc. v. FDA*, 449 F.3d 141 (D.C. Cir. 2006). Here, MPD has not asserted that the redaction of the business address is necessary to protect employees.

> about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

Reporters Comm. for Freedom of Press, 489 U.S. at 772-773.

Courts have consistently held that the purpose of FOIA is to inform citizens of "what their government is up to." *Id*. "This inquiry . . . should focus not on the general public interest in the subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld." *Schrecker v. United States Dep't of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (internal citations omitted). Information is deemed valuable under FOIA when it would permit public scrutiny of an agency's behavior or performance. *Id.* at 666.

Your arguments that disclosure will neither prejudice nor impede any ongoing investigation or case are not relevant to an analysis under Exemption 3(C).[3] Further, your client's personal interest in disclosure does not shed light on MPD's conduct as an agency. As a result, for the information that involves a substantial privacy interest and no countervailing public interest, MPD properly redacted the records pursuant to Exemption 3(C).

Conclusion

Based on the foregoing, MPD's decision is affirmed in part and remanded in part. This Office affirms MPD's redaction of the following personally identifiable information: names, personal addresses, and personal phone numbers. Within 10 business days from the date of this decision, MPD shall review the other previously redacted information (e.g., business addresses, professional information, and report page numbers), as well as records withheld in their entirety, and either provide you with additional disclosures in accordance with the guidance provided herein or explain their continued withholdings/redactions.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

[3] These arguments could be pertinent under D.C. Official Code §§ 2-534(a)(3)(A) and (3)(B), which protect disclosure of information that would interfere with enforcement proceedings or deprive an individual of a fair trial, but those exemptions are not at issue here.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-76

May 30, 2017

VIA ELECTRONIC MAIL

Mr. David Ducatman

RE: FOIA Appeal 2017-76

Dear Mr. Ducatman:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Your appeal is based on the failure of the Department of Housing and Community Development ("DHCD") to respond to an April 26, 2017, request you submitted to DHCD on behalf of Stewart Title Group, LLC for records relating to the 1980 Rental Housing Conversion and Sale Act.

The record before us indicates that DHCD has not acknowledged receipt of your request or updated you on its status. As a result, you filed the instant appeal on the grounds that DHCD's failure to respond is a constructive denial under D.C. Official Code § 2-532(e).

Upon receiving your appeal on May 17, 2017, this Office notified DHCD and requested that it provide us with a response. DHCD did not respond to this Office by the May 24, 2017 deadline or seek an extension to respond pursuant to 1 DCMR § 412. In the interest of a complete record, this Office contacted DHCD again on May 25, 2017, but has still not received an agency response as of the writing of this decision.

DHCD has failed to provide you with records within the 15 business days prescribed by D.C. Official Code § 2-532 (c)(1). Further, based on the record before this Office, it appears that DHCD did not seek an extension to respond to your request by "written notice . . . setting forth the reasons for extension and expected date for determination," as contemplated by D.C. Official Code § 2-532(d)(1). Lastly, DHCD did not assert an exemption to justify withholding records at any point. As a result, this Office finds that DHCD constructively denied your request. D.C. Official Code § 2-532(e). Having denied your request, and having failed to offer an explanation to this Office for the reasons for such denial, this Office finds DHCD to be improperly withholding the records at issue.

In light of the above, this Office orders DHCD to, within 5 business days of the date of this decision: (1) identify all record repositories likely to contain responsive records; (2) search those repositories for responsive records; and (3) provide you with any responsive documents in DHCD's possession, subject to redaction or withholding in accordance with D.C. Official Code § 2-534. You may challenge DHCD's subsequent response by separate appeal.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Timothy Wilson, FOIA Officer, DHCD (via email)
Julia Wiley, General Counsel, DHCD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-77

June 2, 2017

VIA ELECTRONIC MAIL

Mrs. Kelechi Ahaghotu

RE: FOIA Appeal 2017-77

Dear Mrs. Ahaghotu:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") failed to produce documents you requested.

In the decision with respect to FOIA Appeal 2017-20, we ordered MPD to provide documents to you on a rolling basis. You have received three batches of documents thus far, the last one on March 23, 2017. Having not received another batch in 8 weeks, you filed an appeal, construing the delay as a constructive denial of your request. After you filed your appeal, MPD informed our Office that the latest batch of documents is voluminous and that MPD is in the process of reviewing and redacting them. MPD represents that productions will continue on a rolling basis and that MPD is committed to completing the production as soon as possible.

MPD further advised this Office that the fourth batch consists of a single document with an attachment that is over 250 pages in length. This document cannot be broken down further, and MPD must complete review of the entire document before its release. Beyond that, MPD represents that there will be further batches, as there are over 1100 additional remaining pages of responsive documents. MPD expects to release the fourth batch by the end of next week, with the remainder to follow in smaller batches.

As your appeal was based on the gap in time between batches of MPD's rolling production, and MPD has explained that it does not intend to withhold responsive records but is instead working at capacity to redact and release them to you, there is little this Office can do beyond order MPD to complete production. Therefore, we remand this matter to MPD to release the fourth batch within 5 business days of this decision, and to complete its review, redaction and release of the remainder of production, as soon as possible. This remand shall be without prejudice to you to assert any challenge, by separate appeal, to the substantive responses MPD sends you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-78

June 2, 2017

VIA ELECTRONIC MAIL

Mr. Harold Christian

RE: FOIA Appeal 2017-78

Dear Mr. Christian:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Office of the Chief Financial Officer ("OCFO") failed to adequately respond to a request you submitted on July 26, 2016 for certain financial records.

Upon receiving your appeal, this Office contacted the OCFO and requested that it respond. The OCFO sent us a letter on May 31, 2017, on which you were copied. OCFO stated that it had gathered additional documents responsive to your request, rendering your appeal moot. OCFO's supplemental production was attached to its letter.

In light of the supplemental production, we contacted you to inquire whether you wish to pursue your appeal. You responded, "I contend the supplemental [sic] was incomplete, but I do not wish to pursue the matter any further."

Since your appeal has been withdrawn, this Office will not issue a substantive decision on the matter.

Respectfully,

Mayor's Office of Legal Counsel

cc: Stacie Y.L. Mills, Assistant General Counsel, OCFO (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-79

June 5, 2017

VIA ELECTRONIC MAIL

Jeffrey L. Light, Esq.

RE: FOIA Appeal 2017-79

Dear Mr. Light:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on behalf of your client. Your appeal relates to FOIA Appeal 2017-06, in which this Office ordered the Metropolitan Police Department ("MPD") to conduct a second search for documents you requested. MPD conducted the search and located three emails. One email was released in full, one was released in part, and one was entirely withheld. You submitted the instant appeal on the grounds that MPD's withholding of one of the emails in its entirety was improper because MPD has not established how releasing the document would interfere with its investigation.

This Office advised MPD of this appeal, and MPD responded on June 1, 2017.[1] MPD indicated that it reevaluated its position and will be releasing portions of the withheld documents that are responsive to your request.

In light of MPD's representation that it will be releasing non-privileged, segregable portions of the records you requested, we consider your appeal to be moot and hereby dismiss it. The dismissal shall be without prejudice, however, and you are free to assert any challenge by separate appeal to the redactions made to the documents you receive.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

[1] A copy of MPD's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-80

May 30, 2017

VIA ELECTRONIC MAIL

Ms. Barbara Donaldson

RE: FOIA Appeal 2017-80

Dear Ms. Donaldson:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Your appeal is based on the failure of the Department of Consumer and Regulatory Affairs ("DCRA") to respond to a request you submitted on February 9, 2017, for copies of approved building plans for a particular property.

DCRA marked your request as "Closed – Granted in Full" in the FOIAXpress system on April 13, 2017; however, you did not receive any documents via email or FOIAXpress. As a result, you appealed DCRA's non-responsiveness.

Upon receipt of your appeal, this Office contacted DCRA and inquired as to why your request had been closed and marked granted in full when you had not received any responsive documents. DCRA responded on May 23, 2017, in an email to you on which we were copied. The email indicated that your request had been closed by mistake, and that the documents would be electronically delivered to you on May 26, 2017. You notified this Office at the close of business on May 26, 2017, that you had still not received anything from DCRA.

DCRA has failed to provide you with records within the 15 business days prescribed by D.C. Official Code § 2-532(c)(1). DCRA has not asserted to this Office or to you that the records are exempt from production under DC FOIA. As a result, this Office finds that DCRA has constructively denied your request pursuant to D.C. Official Code § 2-532(e) and is improperly withholding the records at issue.

In light of the above, we order DCRA to provide you with all documents in the agency's possession that are responsive to your request within 2 business days of the date of this decision.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Charles Thomas, General Counsel, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-81

June 14, 2017

VIA ELECTRONIC MAIL

Mr. Adam Borzecki

RE: FOIA Appeal 2017-81

Dear Mr. Borzecki:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Your appeal is based on the denial you received from the Metropolitan Police Department ("MPD") with respect to your request for pre-employment background investigation documents related to you.

Upon receipt of your appeal, this Office notified MPD and requested an explanation for its denial. MPD responded on June 14, 2017,[1] indicating that it will be processing your request in accordance with our decision in FOIA Appeal 2016-67.[2]

In light of MPD's representation that it will be processing your request and releasing documents in accordance with our previous related decision, we consider your appeal to be moot and hereby dismiss it. The dismissal shall be without prejudice, however, and you are free to assert any challenge by separate appeal to the substantive response you receive from MPD.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

[1] A copy of MPD's response is attached.
[2] This decision concerns a similar request. A copy of the decision is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-82

June 14, 2017

VIA E-MAIL

Ms. Justine Coleman

RE: FOIA Appeal 2017-82

Dear Ms. Coleman:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested pertaining to complaints against George Washington University police officers.

Background

On March 19, 2017, you submitted a FOIA request to the MPD for records related to complaints against George Washington University police officers for the past 10 years. On May 18, 2017, MPD denied your request, stating that disclosure of the records would constitute an unwarranted invasion of personal privacy under D.C. Official Code § 2-534(a)(2) ("Exemption 2") and D.C. Official Code § 2-534(a)(3)(C) ("Exemption 3(C)"). MPD further asserted that due to the small number of complaints, redaction would not be sufficient to prevent the identification of individuals involved and protect their personal privacy.

On appeal you challenge MPD's response, asserting that police officers do not have a right to privacy while performing their work. Additionally, you assert that MPD has granted similar FOIA requests in the past and should grant your current request.

MPD sent this Office a response to your appeal on June 7, 2016.[1] MPD reaffirms its earlier position that under Exemptions 2 and 3(C) the records are exempt in their entirety due to the small number of officers involved. In further support of its position, MPD cites a GW Hatchet article from 2013 that identifies an officer after MPD disclosed records in response to a similar FOIA request. Finally, MPD argues that you have not raised a public interest applicable to DC FOIA to balance against the privacy interests of the individuals involved in the records sought.

[1] A copy of the MPD's response is attached.

Discussion

It is the public policy of the District of Columbia 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).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal stature are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemptions 2 and 3(C)

Exemptions 2 and 3(C) of the DC FOIA relate to personal privacy. Exemption 2 applies to "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." 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." While Exemption 2 requires that the invasion of privacy be "clearly unwarranted," the word "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 Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

Records pertaining to investigations conducted by the MPD are exempt from disclosure under Exemption 3(C) if the investigations focus on acts that could, if proven, 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). *See also Rugiero v. United States Dep't of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well."). Since the records you seek relate to investigations that could result in civil or criminal sanctions, Exemption 3(C) applies to your request.

Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of one's individual privacy interests against the public interest in disclosing the disciplinary files. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 756. On the issue of privacy interests, the D.C. Circuit has held:

> [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)[2]. "The 7(C) exemption recognizes the stigma potentially

[2] Exemption 7(C) under the federal FOIA is the equivalent of Exemption 3(C) under the DC

> associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators."

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984) (quoting *Bast v. United States Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)).

Here, we find that there is a sufficient privacy interest associated with police officers being investigated based on allegations of wrongdoing. "[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 [(3)(C)]." *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 863 (D.C. Cir. 1981). An agency is justified in not disclosing documents that allege wrongdoing even if the accused individual was not prosecuted for the wrongdoing, because the agency's purpose in compiling the documents determines whether the documents fall within the exemption, not the ultimate use of the documents. *Bast*, 665 F.2d at 1254.

As discussed above, the D.C. Circuit in the *Stern* case held that individuals have a strong interest in not being associated with alleged criminal activity and that protection of this privacy interest is a primary purpose of the investigatory records exemption. *Stern*, 737 F.2d at 91-92. We find that the same interest is present with respect to disciplinary sanctions that could be imposed on police officers. Even if records consist of mere allegations of wrongdoing, the disclosure could have a stigmatizing effect regardless of accuracy.

With regard to the second part of the privacy analysis under Exemption 3(C), we examine whether the individual privacy interest is outweighed by the public interest to require disclosure. On appeal, you assert that the GW community deserves to be informed about officer misconduct. The public interest in the disclosure of a public employee's disciplinary files was addressed by the court in *Beck v. Department of Justice, et al*., 997 F.2d 1489 (D.C. Cir. 1993). In *Beck*, the court held:

> The public's interest in disclosure of personnel files derives from the purpose of the [FOIA]--the preservation of "the citizens' right to be informed about what their government is up to." *Reporters Committee*, 489 U.S. at 773 (internal quotation marks omitted); *see also Ray*, 112 S. Ct. at 549; *Rose*, 425 U.S. at 361. This statutory purpose is furthered by disclosure of official information that "sheds light on an agency's performance of its statutory duties." *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that "reveals little or nothing about an agency's own conduct" does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773. The identity of one or two individual relatively low-level government wrongdoers, released in isolation, does not provide information about the agency's own conduct.

FOIA.

Id. at 1492-93.

In the instant matter, disclosing identity of individuals in the records you are seeking would not shed light on MPD's performance of its statutory duties and would constitute an invasion of the individual police officers' privacy interests under Exemptions 3(C) and (2) of the DC FOIA.

Segregability

The last issue to be considered is whether MPD can redact the records to protect personal privacy interests. D.C. Official Code § 2-534(b) requires that an agency produce "[a]ny reasonably segregable portion of a public record . . . after deletion of those portions" that are exempt from disclosure. The phrase "reasonably segregable" is not defined under DC FOIA and the precise meaning of the phrase as it relates to redaction and production has not been settled. *See Yeager v. Drug Enforcement Admin*., 678 F.2d 315, 322 n.16 (D.C. Cir. 1982). To withhold a record in its entirety, courts have held that an agency must demonstrate that exempt and nonexempt information are so inextricably intertwined that the excision of exempt information would produce an edited document with little to no informational value. *See e.g., Antonelli v. BOP*, 623 F. Supp. 2d 55, 60 (D.D.C. 2009).

Here, MPD asserts that redaction cannot protect the privacy interests at issue because the GW Hatchet published the name of an officer who was the subject of a redacted complaint that it received from a prior FOIA request. The article references two GW special police officers who were suspended. It identifies one officer but not the second, stating that MPD redacted the officer's identity. Not having reviewed the prior FOIA disclosure, it is unclear how the GW Hatchet identified one of the officers in the report; however, the article demonstrates that the MPD's redactions were successful at protecting the identity of the other officer. As a result, we find that MPD's prior experience with a similar request does not justify withholding the responsive records in their entirety but rather allows for more thorough redaction to remove potentially identifying material from the responsive records.

MPD further asserts that due to the small number of officers employed and the close community of the GW campus, the privacy interests involved cannot be protected through redaction. We note that the request here is for a 10-year window. MPD has not identified the number of officers or complaints during the relevant timeframe. As a result, MPD has not offered sufficient evidence to justify withholding the responsive records in their entirety.

Conclusion

Based on the forgoing, we remand the MPD's decision. MPD shall conduct a reasonable search for responsive records and provide non-exempt responsive records, subject to redaction, to you on a rolling basis, beginning in 10 business days from the date of this decision.

This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-83

June 14, 2017

Mr. James Reed

RE: FOIA Appeal 2017-83

Dear Mr. Reed:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") failed to adequately search for records you requested under the DC FOIA.

Background

In February of 2017, you submitted a request under the DC FOIA to MPD seeking records pertaining to yourself from 1989 to 1995. On May 4, 2017, MPD granted your request in part and denied it in part – redacting portions of records disclosed to you pursuant to D.C. Official Code § 2-534(a)(2).

On appeal you challenge the adequacy of MPD's search on the grounds that you believe additional responsive documents should exist that have not been provided to you – namely "investigatory reports and other records and information contained in its files." MPD provided this Office with a response to your appeal on June 7, 2017.[1] In its response, MPD provided a description of the search it conducted to locate records responsive to your request. MPD had both its Records Office and Criminal Investigation Division ("CID") conduct a search for responsive documents. The records provided to you were the result of the Records Office's search. The CID's search did not find responsive documents. MPD further proffered that because of its retention schedule, it is unlikely responsive records from 1989 to 1995 would have been retained by CID.

Discussion

It is the public policy of the District of Columbia 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 . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C.

[1] A copy of MPD's response is attached for your reference.

Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

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). Accordingly, 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).

Since MPD asserts that it has not withheld any responsive records from you, the primary issues in this appeal are your belief that more records exist and your contention that MPD conducted an inadequate 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. U.S. 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).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining 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 that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In response to your appeal, MPD identified the relevant locations for records responsive to your request: the files of the CID and the Records Office. MPD further indicated that it conducted searches of these locations. The search of the Records Office yielded responsive documents that were provided to you, whereas the search of the CID did not identify responsive documents. Additionally, MPD explained that CID was unlikely to possess responsive records from the time period 1989 to 1995 because of its record retention schedule. Although you believe MPD has failed to disclose "investigatory reports" that may exist, under applicable FOIA law, the test is not whether any additional documents might conceivably exist, but whether MPD's search for

responsive documents was adequate. *Weisberg*, 705 F.2d at 1351. Based on the letter MPD provided this Office in response to your appeal, we find that MPD conducted an adequate search.

Conclusion

Based on the foregoing, we affirm the MPD's decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-84

June 14, 2017

VIA ELECTRONIC MAIL

Mr. Douglas Jackson

RE: FOIA Appeal 2017-84

Dear Mr. Jackson:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Your appeal is based on the denial you received from the Department of Insurance, Securities, and Banking ("DISB") with respect to your request for records related to the preparation to file criminal charges against certain companies in 2006 and 2007.

On March 23, 2017, you submitted your FOIA request to DISB. On May 2, 2017, you received DISB's response that no responsive records were found. You appealed DISB's response stating your belief that responsive records should exist. Further, you argue that if responsive records do exist the records should be disclosed because the case the records pertain to has been closed.

Upon receipt of your appeal, this Office notified DISB and requested an explanation for its denial. DISB responded on June 13, 2017, indicating that additional information submitted with your appeal allowed DISB to located responsive records. It is our understanding that DISB has provided those records to you with redactions to protect personal privacy pursuant to D.C. Official Code § 2-534(a)(2). Further, it is our understanding that DISB is processing additional email searches and will provide you with non-exempt responsive records, subject to redaction.

In light of DISB's disclosure and representation that it will continue processing your request, we consider your appeal to be moot and hereby dismiss it. The dismissal shall be without prejudice, however, and you are free to assert any challenge by separate appeal to the substantive response you receive from DISB.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: M. Claudine Alula, Paralegal Specialist and FOIA Coordinator, DISB (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-85

June 21, 2017

VIA US MAIL

Mr. Glenn Ballard

RE: FOIA Appeal 2017-85

Dear Mr. Ballard:

This letter responds to the above-captioned administrative appeal that you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In this appeal, you assert that the Office of Unified Communications ("OUC") failed to respond to a FOIA request you submitted to OUC for documents related to a 911 call made in 2008.

You submitted your FOIA request on March 17, 2017, for a transcript of a 911 call made in 2008. Having not received a response to your request, you filed this appeal on June 7, 2017.

This Office notified OUC of your appeal, and on June 15, 2017, OUC responded to the appeal by sending you a denial letter. In its denial, OUC explained that due to OUC's record retention policy,[1] it would not maintain a transcript that was generated in 2008 as such records are kept for only three years. As a result, OUC does not possess any records responsive to your request.

Since your appeal was based on a lack of a response from OUC, and since OUC has since provided you with a response, we consider this appeal to be moot, and it is dismissed.

This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Tammy Creamer, FOIA Officer, OUC (via email)

[1] The policy and OUC's letter are attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-86

June 27, 2017

VIA ELECTRONIC MAIL

Keith Allison

RE: FOIA Appeal 2017-86

Dear Mr. Allison:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Corrections ("DOC") improperly withheld records you requested under the DC FOIA.

Background

On April 3, 2017, you sent a clarified request to the DOC for personnel records relating to yourself. On April 10, 2017, DOC responded, granting in part and denying in part your requests. In specific, DOC withheld documents responsive to your request that related to a confidential background investigation conducted on you for pre-employment screening. DOC withheld these documents on the basis of D.C. Official Code §§ 2-534(a)(3)(A)(i) and (a)(3)(D). Further DOC withheld these documents because of a waiver which you signed as a part of the application process that stated:

> I understand that information and documents related to the background check, suitability investigation or any other inquiry shall be kept in strict confidence and shall not be disclosed to me nor shall any information be discussed with me in a manner that would reveal or permit me to deduce the source of any information.

On appeal, you challenge DOC's withholding of responsive records. Your appeal is largely a narrative of your belief that you are entitled to re-employment. You contend that "The Office of Investigation . . . is using the Supervisor Questionnaire Sheet to fabricate untruthful accusations against me to deny me the right for re-employment" and that if a completed supervisor questionnaire sheet about you exists, you would like a copy. You refute DOC's characterization of the withheld records as confidential, because "[t]his information is of public record because the supervisors' references and questionnaire is considered part of the employees yearly Annual Performance rating, which can't be deduce [sic] from and by the applicant requesting the information."

DOC provided this office with responses to your appeal on June 21, 2017, and June 22, 2017, in which DOC reaffirmed its position vis-à-vis the withheld documents. DOC argues that release of the documents would interfere with an ongoing enforcement proceeding in the District's Office

of Human Rights, that you have waived your FOIA rights to these documents, and that regulations preclude the documents' release pursuant to D.C. Official Code § 2-534(a)(6).[1]

Discussion

It is the public policy of the District of Columbia 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). The right to inspect a public record, however, is subject to exemptions. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal FOIA statue. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute 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 crux of this matter is DOC's assertion[2] that you have waived your FOIA rights for the requested records by virtue of having signed an Authorization for Release of Information ("Authorization"), which states, in relevant part:

> I understand that information and documents related to the background check, suitability investigation or any other inquiry shall be kept in strict confidence and shall not be disclosed to me nor shall any information be discussed with me in a manner that would reveal or permit me to deduce the source of any information.

The Authorization further provides that "the Department of Corrections has the authority to establish my suitability for employment by conducting pre-employment checks and background checks and investigations in accordance with D.C. Code § 1-604.01 et seq. and Chapter 4 of the District of Columbia Personnel Regulations." DOC's second argument in support of its withholding is based on DOC Policy 3040.6H ("DOC Policy"), which, according to DOC, precludes disclosure of the records sought.

We need not reach the issue of whether a waiver of FOIA rights is possible because we find that in withholding the instant records, DOC has incorrectly interpreted the waiver provision contained in the Authorization you signed as applying to FOIA.

The relied upon Authorization and DOC Policy allow for records to be kept "in strict confidence in accordance with . . . the District Personnel Manual (DPM) Chapters 4 and 31." DOC Policy

[1] Copies of DOC's response and declaration are attached.
[2] This Office rejects DOC's Exemption 6 argument, as it relies on a regulation whereas Exemption 6 protects information exempted from disclosure by statute. Similarly, this Office disagrees with DOC's Exemption 3 argument relating to an Office of Human Rights investigation, because the withheld records are not investigatory records compiled for law enforcement purposes, and there is no evidence that their disclosure would interfere with an enforcement proceeding.

3040.6H at 3. Accordingly, under the policy, "information related to pre-employment and background investigations and suitability actions shall be kept in strict confidence in accordance with DPM Chapters 4 and 31." To that end, "[s]ources of information shall not be disclosed except as specifically authorized . . . [by] the DPM." Both the Authorization and the DOC Policy appear to contemplate a waiver of disclosure rights found in DPM Chapters 4 and 31; however, neither appears to contemplate a waiver of rights under the DC FOIA. Therefore, assuming for the sake of argument the validity of the Authorization, it pertains only to your disclosure rights under Chapters 4 and 31 and not under DC FOIA or any other law or regulation.

For the reasons discussed above, we reject the two FOIA-related arguments that DOC has thus far advanced in defense of its withholding (i.e., the arguments concerning Exemption 6 and Exemption 3 as it relates to the proceeding before OHR). The withheld records may still be exempt, in whole or in part, under other FOIA exemptions.[3] DOC is obligated under D.C. Official Code 2-534(b) to review the withheld records, disclose portions that are reasonably segregable and nonexempt, and explain to you the reasoning for any withholdings. *Judicial Watch, Inc. v. U.S. Dep't of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F .Supp. 2d 106, 120 (D.D.C. 2010)).

Conclusion

Based on the foregoing, we remand DOC's decision. Within seven business days from the date of this decision, DOC shall review the withheld documents in accordance with the DC FOIA and release to you any segregable, nonexempt portions, along with a justification for any continued withholdings.

This constitutes the final decision of this Office; however, you are free to initiate a new appeal based on the subsequent substantive response you receive from DOC.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Oluwasegun Obebe, Records, Information & Privacy Officer, DOC (via email)

[3] E.g., under D .C. Official Code §§ 2-534(a)(3)(D), (a)(3)(E), which exempts from disclosure documents that would disclose the identity of a confidential source or disclose investigative techniques and procedures not generally known outside the government, and under the deliberative process privilege, which may be invoked under D.C. Official Code § 2-534(a)(4).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-90

June 30, 2017

Anonymous Requestor

RE: FOIA Appeal 2017-90

Dear Anonymous Requestor:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested pertaining to an individual who was criminally prosecuted in connection with an MPD investigation.

Background

You submitted a FOIA request to the MPD for records relating to a federal prosecution that "would have been turned over to defense counsel in discovery." On June 15, 2017, MPD denied your request, stating that disclosure of the records would constitute an unwarranted invasion of personal privacy under D.C. Official Code § 2-534(a)(2) ("Exemption 2") and § 2-534(a)(3)(C) ("Exemption 3(C)").

On appeal you challenge MPD's response, asserting without legal authority that "the discovery file is a public record once turned over to defense counsel, … [and] must be supplied upon request." Additionally, you assert that "[a]ny semblance of a balancing test between the public's right to know about 11 unresolved violent crimes and a convicted felon's right to privacy will lead to the same conclusion."

MPD sent this Office a response to your appeal on June 23, 2017.[1] Therein, MPD argues, citing to federal case law, that this Office should dismiss the appeal because a requester who does not identify himself or herself does not, under FOIA, have standing to file an appeal to contest an agency's response.[2] Substantively, MPD is "not in a position to ascertain what documents would

[1] A copy of the MPD's response is attached.
[2] This Office acknowledges legal precedent that an anonymous individual lacks standing to appeal under the federal Freedom of Information Act ("federal FOIA"); however, we are not persuaded that it is controlling over DC FOIA, particularly in light of the District's public policy that all persons are entitled to full and complete information regarding the affairs of government. *See* D.C. Official Code § 2-531.

be turned over to a defense attorney," because "[t]he department does not turn documents over to defense lawyers except at the direction of the courts or prosecutors." To that end, MPD "does not have any 'discovery files.'"[3]

Further, MPD reaffirms its earlier position that under Exemptions 2 and 3(C) the records are exempt because they contain "personal identifiers and other information that would lead to the identification of one or more individuals." Additionally, MPD argues that the introduction of evidence in a criminal trial is not dispositive of whether such evidence must be released under FOIA. MPD argues that you have not raised a public interest applicable to DC FOIA to balance against the privacy interests of the individuals involved in the records sought, because the public interest analysis of DC FOIA is related to the performance of governmental duties and not personal interest. Finally, MPD indicates that you have not presented any authorization from any of the individuals referenced in the investigatory documents that would allow you to obtain the documents.

Discussion

It is the public policy of the District of Columbia 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).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal stature are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemptions 2 and 3(C)

Exemptions 2 and 3(C) of the DC FOIA relate to personal privacy. Exemption 2 applies to "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." 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." While Exemption 2 requires that the invasion of privacy be "clearly unwarranted," the word "clearly" is omitted from Exemption 3(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3(C) is

[3] We agree with MPD that it does not appear likely that it would possess documents exactly as described in your request. However, MPD's denial letter indicated that records have been withheld, therefore this decision applies to those records. If you desire records from a prosecutor's office, you should file a separate request there.

broader than under Exemption 2. *See United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).
Records pertaining to investigations conducted by the MPD are subject to Exemption 3(C) if the investigations focus on acts that could, if proven, 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). *See also Rugiero v. United States Dep't of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well."). Since the records you seek relate to investigations that could result in civil or criminal sanctions, Exemption 3(C) applies to your request.

Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of one's individual privacy interests against the public interest in disclosing the disciplinary files. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 756. On the issue of privacy interests, the D.C. Circuit has held:

> [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)[4]. "The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators."

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984) (quoting *Bast v. United States Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)).

Here, we find that this is a request from a third party for law enforcement records about private citizens. This categorically is an invasion of privacy for all individuals who could be identified by the records. *SafeCard Services*, 926 F.2d at 1206. "[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 [(3)(C)]." *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 863 (D.C. Cir. 1981).

As discussed above, the D.C. Circuit in the *Stern* case held that individuals have a strong interest in not being associated with alleged criminal activity and that protection of this privacy interest is a primary purpose of the investigatory records exemption. *Stern*, 737 F.2d at 91-92. We therefore conclude that a privacy interest exists in the withheld documents.

With regard to the second part of the privacy analysis under Exemption 3(C), we examine whether the individual privacy interest is outweighed by the public interest to require disclosure. On appeal, you assert that "the public's right to know about 11 unresolved violent crimes" outweighs "a convicted felon's right to privacy." Under DC FOIA, the public interest must go to

[4] Exemption 7(C) under the federal FOIA is the equivalent of Exemption 3(C) under the DC FOIA.

furthering the statutory purpose of FOIA, which is reviewing the propriety of governmental actions:

> This statutory purpose is furthered by disclosure of official information that "sheds light on an agency's performance of its statutory duties." *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that "reveals little or nothing about an agency's own conduct" does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773.

Beck v. Department of Justice, et al., 997 F.2d 1489, 1492-93 (D.C. Cir. 1993).

In the instant matter, it is not clear how records relating to the prosecution of a defendant would reveal anything about MPD's performance of its statutory duties.
As a result of the existence of a privacy interest and the apparent lack of a public interest in the records at issue, MPD properly withheld portions of the records that would reveal the identities of private individuals pursuant to Exemption 3(C) of the DC FOIA.

Segregability

The last issue to be considered is whether MPD can redact the records to protect personal privacy interests. D.C. Official Code § 2-534(b) requires that an agency produce "[a]ny reasonably segregable portion of a public record . . . after deletion of those portions" that are exempt from disclosure. The phrase "reasonably segregable" is not defined under DC FOIA and the precise meaning of the phrase as it relates to redaction and production has not been settled. *See Yeager v. Drug Enforcement Admin*., 678 F.2d 315, 322 n.16 (D.C. Cir. 1982). To withhold a record in its entirety, courts have held that an agency must demonstrate that exempt and nonexempt information are so inextricably intertwined that the excision of exempt information would produce an edited document with little to no informational value. *See e.g., Antonelli v. BOP*, 623 F. Supp. 2d 55, 60 (D.D.C. 2009).

Courts have required an agency to address whether it could redact records to protect individual privacy interests, while releasing the remaining information. *Canning v. DOJ*, No. 01-2215, slip op. at 19 (D.D.C. Mar. 9, 2004) (finding application of Exemption 7(C) to entire documents rather than to personally identifying information within documents to be overly broad); *Prows v. DOJ*, No. 90-2561, 1996 WL 228463, at *3 (D.D.C. Apr. 25, 1996) (concluding that rather than withholding documents in full, agency simply can delete identifying information about third-party individuals to eliminate stigma of being associated with law enforcement investigation).

Here, MPD has not asserted that the responsive records in its possession cannot be redacted. As a result, MPD has not offered sufficient evidence to justify withholding the responsive records in their entirety.

Conclusion

Based on the forgoing, we remand MPD's decision. MPD shall conduct a reasonable search for responsive records and provide you with non-exempt responsive records, subject to redaction, on a rolling basis, beginning in 10 business days from the date of this decision.
This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel
cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

RECOMMENDATIONS FOR APPOINTMENTS AS 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 October 15, 2017.

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 September 15, 2017. 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: October 15, 2017**
Recommendations for appointment as DC Notaries Public **Page 2**

Aguiar	Alexandra C.	World Bank 2121 Pennsylvania Avenue, NW	20433
Aguilar-Rocha	Maria	Self 200 K Street, NW, Apartment 506	20001
Ames	Maria T.	Luse Gorman, PC 5335 Wisconsin Avenue, NW, Suite 780	20015
Anderson-Rhone	Deloris	Branch Banking and Trust Company 317 Pennsylvania Avenue, SE	20003
Archer	Qiana Y.	Logan Title. LLC 631 Pennsylvania Avenue, SE	20003
Balch	Alan	National Immigration Forum 50 F Street, NW, Suite 300	20001
Begal	William A.	Self 5001 38th Street, NW	20016
Bernillion	Anna	MCN Build, Inc. 1214 28th Street, NW	20007
Bhatt	Kiran James	The Public Defender Service for the District of Columbia 633 Indiana Avenue, NW	20004
Booth	Mary S.	WilmerHale 1875 Pennsylvania Avenue, NW	20006
Brock	Jenna Helene	Jacobson Holman, PLLC 400 Seventh Street, NW, Suite 700	20004
Brooks	Karen F.	District of Columbia Board of Elections 441 4th Street, NW, Suite 250 N	20001
Bryant	Corey Edward	Eagle Bank 2001 K Street, NW	20006
Brynteson	Karen	Brynteson Reporting, Inc. 888 16th Street, NW, Suite 800	20006

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Builes	Ana Maria	The Public Defender Service for the District of Columbia 633 Indiana Avenue, NW	20004
Bustos-Morales	Roxana G.	McCullough Construction, LLC-McCullough Residential, LLC 5513 Connecticut Avenue, NW, Suite 200	20015
Cappelloni	Lucia	Georgetown University Center for Social Justice Research, Teaching & Service 1421 37th Street, NW, Suite 130	20057
Castaneda	Martha	Cumulus Media 4400 Jenifer Street, NW, Suite 400	20015
Chaney	Cyndi	National Association of Letter Carriers 100 Indiana Avenue, NW	20001
Chang	Daniel Francisco	American Association of State Highway and Transportation Officials 444 North Capitol Street, NW, Suite 249	20001
Cherner	Benjamin L.	Douglas Development Corporation 702 H Street, NW	20001
Coney	Dena L.	Steptoe & Johnson, LLP 1330 Connecticut Avenue, NW	20036
Connor	London	The Public Defender Service for the District of Columbia 633 Indiana Avenue, NW	20004
Cook	Christopher M.	Air Line Pilots Association, International 1625 Massachusetts Avenue, NW, 8th Floor	20036
Del Cid	Janett S.	Ashcraft & Gerel, LLP 1825 K Street, NW	20006
Delaney	Willi	Self 322 Jefferson Street, NW	20011

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DeSantis	Joseph R.	Fried, Frank, Harris, Shriver & Jacobson, LLP 801 17th Street, NW	20006
Donahoe	Joseph Michael	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Donegan	Brian P.	Snider & Weinstein, PLLC 2000 Massachusetts Avenue, NW	20036
Eagney	Elizabeth J.	Association of American Records 425 Third Street, SW, Suite 1000	20024
Elie	James	Elie and Associates 410 Gallatin Street, NW	20011
Emmell	Michelle	American Federation of Teachers 555 New Jersey Avenue, NW	20001
Fernandez	Jacquelin	Grameen Foundation 1400 K Street, NW, Suite 550	20005
Forame	Rachel Elizabeth	TurnKey Title, LLC 3232 Georgia Avenue, NW, Suite 101	20010
Garey	Vernell Valerie	Wilkinson Barker Knauer, LLP 1800 M Street, NW, Suite 800N	20036
Gebric	Linda	The SEED Foundation 1776 Massachusetts Avenue, NW, Suite 600	20036
Guyer	John Charles Louis	Parsons Corporation 100 M Street, SE	20003
Hargis	Annette	UMWA Health & Retirement Fund 2121 K Street, NW, Suite 350	20037
Hinton	Mary Delores	The Oliver Carr Company 1445 Pennsylvania Avenue, NW, Suite 200	20004

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Jones-Adams	Monique E.	FedEx Corporation 101 Constitution Avenue, NW, Suite 801 East	20001
Knox	Marc D.	Self (Dual) 1802 2nd Street, NW, Unit A	20001
Lahnstein	Katherine R.	Small Enterprise Assistance Funds 1500 K Street, NW, Suite 375	20005
Lam	Karen M.	The US-China Business Council 1818 N Street, NW, Suite 200	20036
Lampe	Sagan	Thyme Real Estate Holdings, LLC 3210 Grace Street, NW	20007
Leahy	William F.	Snider & Weinstein, PLLC 2000 Massachusetts Avenue, NW	20036
Lee	Hannah Elizabeth	Campaign Legal Center 1411 K Street, NW, Suite 1400	20005
Lee-Thomas	Sherree Y.	Martha's Table, Inc. 2114 14th Street, NW	20009
Love	Michele Delores	Crowell & Moring, LLP 1001 Pennsylvania Avenue, NW	20004
Manzano	Jessica M.	Wells Fargo Bank 1934 14th Street, NW	20009
McNair	Angela D.	District of Columbia Department of Human Resources 441 4th Street, NW, Suite 354 N	20001
Mette	Meghan	Bromberg, Kohler Maya. & Maschler, PLLC 2011 Pennsylvania Avenue, NW, 5th Floor	20006
Miller	Caitlin	Georgetown University Center for Social Justice Research, Teaching & Service, Poulton Hall 1421 37th Street, NW, Suite 130	20057

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Mirzayan	Khoosheh	Wells Fargo Bank, NA 1300 I Street, NW, West Tower 12th Floor	20005
Morgan	Cheryl D.	Self 1263 1st Street, SE, Apartment 814	20003
Morris	Tiava Rachel	Fawcett & Fawcett 1100 Connecticut Avenue, NW, Suite 340	20036
Morrison	Margaret A.	Pharm-Pro, Inc. T/A Morgan Pharmacy 3001 P Street, NW	20007
Murphey	Jason S.	T D Bank, NA 4849 Wisconsin Avenue, NW	20016
O'Farrell	Joey C.	Peace Corps 1111 20th Street, NW, Unit 2121	20526
Page	Charniel R.	International Medical Corps 1313 L Street, NW	20005
Parham	Trinza L.	Sterne, Kessler, Goldstein & Fox 1100 New York Avenue, NW, Suite 300	20002
Patton	Frances	Facebook 1299 Pennsylvania Avenue, NW	20004
Paylor	Edward Junior	Self 3221 Ely Place, SE, Apartment 1	20019
Pesce	Jameson H.	The Public Defender Service for the District of Columbia 633 Indiana Avenue, NW	20004
Proctor	Sandra Marie	Office of Administration Hearings 441 4th Street, NW, Suite 450N	20001
Pugliese	Maria	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 200	20036
Queiroz	Eduarda de Souza	Dantes Partners 701 Lamont Street, NW, Suite 11	20010

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Redinger	Daniel	Next Level Partners 410 1st Street, SE, Suite 310	20003
Robinson	Lydia	Miles & Stockbridge, PC 1500 K Street, NW, Suite 800	20005
Rondelli	Katherine L.	Positive Space, LLC 3201 8th Street, NE, Suite G	20017
Rypkema	Michaleen	Proskauer Rose, LLP 1001 Pennsylvania Avenue, NW, Suite 600	20004
Sands	Monique A.	Humphries & Partners, PLLC 1029 Vermont Avenue, NW, Suite 800	20005
Schweitzer	Brooklyn	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Scott	LaVerne Francine	Holland & Knight, LLP 800 17th Street, NW, Suite 1100	20006
Simms	Celia	Self 628 Galveston Place, SE	20032
Smith	DeAnna M.	District of Columbia Board of Elections 441 4th Street, NW, Suite 250 N	20001
Squire	Priscilla O.	Medstar Washington Hospital Center 110 Irving Street, NW, Suite 6a-126	20010
Stewart	Vaughn	Mid-Atlantic Settlement Services 1101 30th Street, NW, Suite 120	20007
Stonerock	Rebecca L.	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 200	20036
Suettinger	Sarah	Cancer Support Community 734 15th Street, NW, Suite 300	20005

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Taulbee	Brad	Agriculture Federal Credit Union 1400 Independence Avenue, SW, Room SM-2	20874
Thomas	Stephen C.	Thomas Real Estate Investments Group, LLC 1629 K Street, NW, Suite 300	20006
Thompson	Myisha	Self (Dual) 4020 Minnesota Avenue, NE, #535	20001
Torres	Maribel	TD Bank 1275 First Street, NE	20002
Tribbett	Renee M.	College Summit, Inc. 1763 Columbia Road, NW, Second Floor	20009
Virgen	Andres Felipe	The Public Defender Service for the District of Columbia 633 Indiana Avenue, NW	20004
Vismale	Maria Mandela	The Public Defender Service for the District of Columbia 633 Indiana Avenue, NW	20004
VonWiegen	Lauren	The Public Defender Service for the District of Columbia 633 Indiana Avenue, NW	20004
Washington	Charletta	Precision Healthcare Solutions, LLC 922 M Street, SE	20003
Webster	Karlita	Wilmington Trust 1350 I Street, NW, Suite 200	20737
Williams	Sandra V.	Self 847 Barnaby Street, SE	20032
Wilson	Lenna	Next Level Partners 410 1st Street, SE, Suite 310	20003
Woodward	Yolanda B.	Cooper & Crickman, PLLC 6856 Eastern Avenue, NW	20012

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Young	Kelli Renee	Motley Rice, LLC 401 9th Street, NW, Suite 1001	20004
Zelada	Angela E.	Wells Fargo Bank 1934 14th Street, NW	20009

TWO RIVERS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Arts Instruction

Two Rivers Public Charter School is seeking companies to provide visual art instruction to students in grades second through eight. Will require availability beginning November 2017 through June 2018 for approximately 25 hours of instruction weekly. Two Rivers is looking for an organization to provide arts-related staff, not individual artists or teachers. For a copy of the RFP please email Mary Gornick at procurement@tworiverspcs.org.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

REGULAR MEETING OF THE BOARD OF TRUSTEES

NOTICE OF PUBLIC MEETING

The regular meeting of the Board of Trustees of the University of the District of Columbia will be held on Tuesday, September 19, 2017 at 6:00 p.m. in the Board Room, Third Floor, Building 39 at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at www.udc.edu.

For additional information, please contact: Beverly Franklin, Executive Secretary at (202) 274-6258 or bfranklin@udc.edu.

Planned Agenda

I. Call to Order and Roll Call
II. Approval of the Minutes – June 6, 2017
III. Action Items
- a. Tenure for Professor March Karin, David A. Clarke School of Law
- b. Tenure for Professor Kate Klein, School of Engineering & Applied Sciences
- c. Tenure for Professor Lara Thompson, School of Engineering & Applied Sciences
- d. Notice of Final Rulemaking, Amendments to Chapter 7, Updating Tuition Rates for AY 2018-2019

IV. Report of the Chairperson
V. Report of the President
VI. Committee Reports
- a. Executive – Mr. Bell
- b. Committee of the Whole – Mr. Bell
- c. Academic and Student Affairs – Dr. Tardd
  - i. Alumni Task Force – Mr. Shelton
  - ii. Communications Task Force – Ms. Jackson
- d. Audit, Budget and Finance – General Schwartz
- e. Community College – Dr. Tardd
- f. Operations – Mr. Shelton

VII. Unfinished Business
VIII. New Business
IX. Closing Remarks

Adjournment

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

D.C. Retail Water and Sewer Rates Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) D.C. Retail Water and Sewer Rates Committee will be holding a meeting on Tuesday, September 26, 2017 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Committee Chairperson
2.	Monthly Updates	Chief Financial Officer
3.	Committee Workplan	Chief Financial Officer
4.	Other Business	Chief Financial Officer
5.	Adjournment	Committee Chairperson

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Operations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Operations Committee will be holding a meeting on Thursday, September 21, 2017 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Committee Chairperson
2.	AWTP Status Updates 1. BPAWTP Performance	Assistant General Manager, Plant Operations
3.	Status Updates	Chief Engineer
4.	Project Status Updates	Director, Engineering & Technical Services
5.	Action Items - Joint Use - Non-Joint Use	Chief Engineer
6.	Water Quality Monitoring	Assistant General Manager, Consumer Services
7.	Action Items	Chief Engineer Assistant General Manager, Consumer Services
8.	Emerging Items/Other Business	
9.	Executive Session	
10.	Adjournment	Committee Chairperson

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Finance and Budget Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Finance and Budget Committee will be holding a meeting on Thursday, September 28, 2017 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information please contact: Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

1. Call to Order	Committee Chairman
2. July & August 2017 Financial Report	Director of Finance & Budget
3. Agenda for October Committee Meeting	Committee Chairman
4. Adjournment	Committee Chairman

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 19155 of Advisory Neighborhood Commission 3C and 2926 Neighborhood and Safety Coalition, pursuant to 11 DCMR §§ 3100 and 3101,[1] from an August 13, 2015 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1511364, for a 10-space accessory parking area at the rear of the apartment building located in the R-2 District at 2926 Porter Street, N.W. (Square 2068, Lot 95).

HEARING DATE: January 12, 2016
DECISION DATE: March 1, 2016

ORDER DENYING APPEAL

This appeal was submitted on October 2, 2015 by Advisory Neighborhood Commission ("ANC") 3C and the 2926 Neighborhood and Safety Coalition, to challenge a decision of the Zoning Administrator ("ZA"), at the Department of Consumer and Regulatory Affairs ("DCRA"), made August 13, 2015, to issue Building Permit No. B1511364 ("the permit"), allowing the installation of a 10-space accessory parking area at the rear of an apartment building located in the R-2 Zone ("the property"). Following a full public hearing, the Board of Zoning Adjustment ("the Board") voted to affirm the decision of the ZA and deny the appeal.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on January 12, 2016. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellants, to DCRA, and to the owner of the subject property, Adams-Porter LLC (the "Owner").

Parties

Appellant
The Appellant is Advisory Neighborhood Commission ("ANC") 3C and the 2926 Neighborhood and Safety Coalition (collectively, the "Appellant"). ANC 3C is the ANC for the area within which the property that is the subject of the appeal is located. The 2926 Neighborhood and

[1] All references to Title 11 DCMR within the body of this order are to provisions that were in effect on the date the case was decided by the Board of Zoning Adjustment, but which were repealed as of September 6, 2016 (the "1958 Zoning Regulations") and replaced by new text (the "2016 Zoning Regulations"). The repeal and adoption of the replacement text has no effect on the validity of the Board's decisions in this case or of this order.

Safety Coalition is a group of approximately 20 neighbors in the immediate vicinity of the property. The Appellant was represented by the Law Offices of Andrea C. Ferster, Andrea C. Ferster, Esq.

DCRA
The Appellee, DCRA, is the agency of the government of the District of Columbia that is authorized, among other things, to issue building permits. DCRA was represented by its Office of the General Counsel, Maximillian Tondro, Esq. The Zoning Division of DCRA is headed by the Zoning Administrator ("ZA"), Matthew LeGrant, and is charged with administering the Zoning Regulations. Mr. LeGrant testified at the public hearing on behalf of DCRA.

Property Owner
As the owner of the subject property, Adams-Porter LLC is automatically a party under 11 DCMR § 3199.1, and will be referred to as the Owner. The Owner was represented by Holland & Knight, Christopher Collins, Esq.

ANC 3C Report

In a resolution dated September 21, 2015, issued after a regularly scheduled meeting with a quorum present, the ANC voted to oppose "the creation of a multi-space parking lot" behind the subject property, stating it believes a special exception or a variance is necessary to create the 10 additional parking spaces. (Exhibit 3.) Because the ANC is an appellant in this case, the ANC participated fully during the appeal.

Motions

Appellant's Request to Amend Appeal to Include C of O
In its Pre-Hearing Statement, the Appellant stated that DCRA had issued a "certificate of occupancy" ("C of O") for the property which referenced the 10 new parking spaces that are the subject of this appeal. (Exhibit 15.) Because the C of O was issued after the appeal was filed, the Appellant requested that the C of O be incorporated into the appeal. DCRA objected to the incorporation of the C of O on the grounds that such an amendment to the appeal would be untimely. (DCRA's Pre-Hearing Statement, Exhibit 17.) DCRA also noted that there was no need to incorporate the C of O if the Appellant's challenge to it were limited to the portion of the C of O relating to the 10 new parking spaces. DCRA further noted that the C of O must conform to any Board ruling relating to the permit, such as a decision by the Board to grant the appeal. At the public hearing, the Appellant stipulated that it was only challenging the C of O's reference to the 10 new parking spaces, and did not press the motion to amend the appeal. (Hearing Transcript ("Tr."), January 12, 2016.) Based upon these arguments and representations, the Board concluded there was no reason to incorporate the C of O into the present appeal.

Owner's Motion to Dismiss Appeal

On January 6, 2016, the Owner submitted a motion to dismiss the appeal for failure to state a claim upon which relief can be granted. (Exhibit 16.) DCRA indicated in its Pre-Hearing Statement that it joined in this motion. (Exhibit 17.) The Board found that the arguments supporting the motion to dismiss went to the merits of the appeal. Rather than rule on the motion without a full hearing, the Board decided to suspend argument on the motion and conduct a full public hearing regarding the merits of the appeal.

The Positions of the Parties

Appellant's Position - The Appellant asserts that the Zoning Regulations do not provide for additional matter of right parking at the condominium apartment building, because the building was built prior to the adoption of the 1958 Zoning Regulations, and is now a nonconforming use in the R-2 Zone District. The Appellant also claims that additional parking spaces are prohibited because the Regulations (§ 2101 parking schedule) do not list a minimum required number of parking spaces for this specific use (an apartment house) in the R-2 Zone. Finally, the Appellant claims that, as a nonconforming use, the apartment house may not be enlarged, expanded, extended, or changed from one nonconforming use to another, and the 10 additional spaces at the property represents such an enlargement or expansion.

DCRA's Position – DCRA asserts that the nonconforming apartment house is a permitted principal use under § 2000.4 of the Regulations. The permit at issue does not authorize any expansion of the nonconforming use; instead the permit authorizes the 10 parking spaces as accessory uses that are incidental to the principal use – the apartment house. The parking at issue is not an expansion of the nonconforming apartment house use, but is a permitted accessory use in the R-2 Zone under 11 DCMR §§ 300.2 and 301.1(c). The Zoning Regulations do not establish parking maxima. Therefore, the number of parking spaces authorized by the permit may exceed the minimum number required by the parking schedule contained in § 2101.1 even where, as here, no spaces are required.

The Owner's Position – The Owner also asserts that the apartment house is the principal use at the property, and is the only nonconforming use at the property. The Owner asserts that the parking spaces are accessory to the apartment house use (not part of the principal use), and are permitted as a matter of right. Further, the Owner asserts that the 10 additional accessory parking spaces are not an expansion of the apartment house use, because the accessory parking use is separate from the principal use. The Owner maintains that §§ 2101.2 and 2101.3 of the Regulations allow a property owner to provide more than the minimum amount of accessory parking even if, as here, no parking is required for a particular principal use. Finally, the Owner asserts that the Zoning Regulations do not impose a maximum limitation on the number of accessory parking spaces for any use in the R-2 Zone.

FINDINGS OF FACT

The Property

1. The property which is the subject of this appeal includes a 23-unit apartment building located in the R-2 Zone.

2. The apartment building was constructed in 1923, prior to the enactment of the 1958 Zoning Regulations, and is a nonconforming use in the R-2 Zone.

3. Subsection 2000.4 of the Zoning Regulations allows any nonconforming use of a structure that was lawfully existing on May 12, 1958 to be continued, operated, occupied, or maintained, subject to the limitations in Chapter 20 of the Regulations governing "Nonconforming Uses and Structures".

4. Since a date prior to the issuance of the subject permit, there have been three accessory parking spaces in the side yard at the property. (Exhibit 16 C.)

The Building Permit

5. On August 12, 2015, the Owner applied for a permit to add a 10-space parking area at the rear of the property.

6. On August 13, 2015, the ZA approved the issuance of Building Permit No. B1511364 (the permit) to "stripe 10 additional parking spaces in the existing rear yard" in addition to the three pre-existing parking spaces at the property. (Exhibit 10.)

The Appeal and the Public Hearing

7. The Appellant filed this appeal on October 2, 2015 after learning of the permit to allow the additional 10 parking spaces.

8. The Board conducted a public hearing during which all of the parties participated.

9. Evidence adduced at the hearing indicated that other nonconforming apartment houses in the vicinity have on-site accessory parking for several vehicles. (Photos, Exhibit 16B.)

10. The ZA testified that accessory parking is a permitted use in all zone districts, and the fact that the parking would be accessory to the nonconforming use is not germane.

11. The ZA testified that he has approved additional accessory parking for nonconforming apartment buildings in a number of previous instances.

CONCLUSIONS OF LAW

The Board is authorized by the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to hear and decide appeals when it is alleged by the appellant that there is an error in any decision made by an administrative officer in the administration of the Zoning Regulations. (11 DCMR §§ 3100.2 and 3200.2.) In an appeal, the Board may reverse or affirm, in whole or in part, or modify the

decision appealed from. (11 DCMR § 3100.4.) After considering the pleadings, the evidence in the record, and the argument by the parties, the Board is not persuaded by the Appellant that the ZA erred in issuing the permit. Rather, the Board concludes that the ZA's decision was lawful and proper.

The apartment house is a nonconforming use that may be continued

By statute, a nonconforming use "may be continued … provided no structural alteration … or no enlargement is made or no new building is erected." D.C. Official Code § 6-641.06(a). The Zoning Regulations, at § 2000.4, allow a nonconforming use to be "continued, operated, occupied, or maintained" (subject to certain provisions). The Appellant cites nothing in the Zoning Regulations stating that a nonconforming use should be treated differently from any other permitted use, except with respect to alterations or enlargement of the nonconforming use.

The 10 accessory parking spaces are allowed in the R-2 Zone as a matter of right

The Appellant argues that the Zoning Regulations do not allow the new accessory parking as a matter of right, but prohibit the addition of the new parking area, especially in a nonconforming rear yard. The Appellant relies on § 300.3 and § 201 (enumerates uses permitted as a matter of right in the R-2 Zone) and § 301.1 (enumerates accessory uses permitted as a matter of right in the R-2 Zone), claiming none of these sections expressly permit the accessory parking uses. The Appellant also claims, without citing a specific regulation, that the Zoning Regulations do not allow new unlimited matter of right accessory parking at a nonconforming apartment house in the R-2 Zone. The Appellant's main assertion is that an apartment house is "not a use permitted for R-2 districts in §§ 300-319" and that § 2000 (generally concerning nonconforming uses) is not within §§ 300-319, so there is no basis in § 301 to affirm the issuance of the permit for the new parking area. The Appellant also argues that § 2101.3 was not intended to create unfettered matter of right accessory parking.

However, as stated in the Findings of Fact, the ZA testified that accessory parking is a permitted use in all zone districts, and the fact that the parking would be accessory to a nonconforming use is not germane. The Board agrees and finds that the 10 accessory parking spaces are accessory uses permissible under §§ 300.2 and 301.1(c). Subsection 300.2 provides that the parking regulations of Chapter 21 may authorize other uses for the R-2 Zone District than those specified in §§ 300-319. Significantly, § 301.1(c) permits accessory uses incidental to permitted uses in the R-2 Zone Districts.

In addition, § 2101.3 of the Regulations allows accessory parking even if no parking is required for a particular use, and even for a nonconforming use. The Appellant claims that § 2101.3 relates only to *required spaces.* (Appellant's Statement, Exhibit 2.) (emphasis in original) However, the Appellant ignores the plain language in § 2101.3 which states that "Nothing contained in this section shall be construed to prohibit the establishment of parking spaces accessory to *buildings or structures for which no required parking spaces are specified in Section 2101.1*". (Emphasis supplied.) Thus, there is nothing in § 2101.3 which supports the Appellant's contention that this section applies only to required parking.

The 10 spaces are not an expansion of a nonconforming use

The Appellant claims that because the existing pre-1958 apartment house use is a nonconforming use, based upon 11 DCMR §§ 2000.2, 2000.3, and 2000.6 (all governing nonconforming uses), changing the nonconforming apartment house with three parking spaces to a nonconforming house with 13 parking spaces, represents a prohibited expansion, and a prohibited change from one nonconforming use to another. To the contrary, the Board finds that the 10 parking spaces do not expand the nonconforming principal use of the property. The existing nonconforming apartment house on the property is a permitted principal use under § 2000.4. (This provision states, in substance, that a lawful nonconforming use may be continued, subject to Chapter 20 of the 1958 Zoning Regulations.).

The Regulations do not limit the number of accessory parking spaces allowed

The Appellant claims that the "10-car parking lot"[2] exceeds any permitted or required parking for the property. (Exhibit 2, p. 2 and Exhibit 15, pgs. 3-4.) As stated above, accessory parking spaces are permitted even where there is no parking requirement. Subsection 2101.2 expressly states: "Nothing contained in this section shall be construed to prohibit the establishment of accessory parking spaces in an amount that exceeds that required by § 2101.1…." What is more, the Board has ruled that the Zoning Regulations do not mandate parking maxima. *Appeal No. 17746 of Reed Cooke Neighborhood Association* (2009).

The accessory parking spaces do not alter the nonconforming rear yard

Contrary to the Appellant's assertion, the 10 accessory spaces do not count against a required rear yard unless in a building or structure that is four feet or higher above the ground. Subsection 2503 of the Regulations specifies that structures up to four feet above grade "*may occupy any yard required* under the provision of this title." (Emphasis supplied.) The permit did not authorize any building or structure, only the provision of 10 parking spaces at grade. Therefore, these 10 parking spaces have no effect on the existing nonconforming rear yard.

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code §1.309.10(d) (2012 Repl.).) In this case, ANC 3C was an appellant and submitted a resolution stating the same issues and concerns it presented during the hearing, and which, for the reasons stated above, the Board found to be unpersuasive.

Based on the evidence of record and the submissions of the parties, the Board concludes that DCRA did not err in its decision to issues the permit authorizing the 10 accessory parking spaces

[2] The Appellant interchangeably describes the 10 accessory parking spaces as a "parking lot", parking spaces", and "parking. The 10 parking spaces which are the subject of this appeal are accessory to the apartment house use, and therefore do not meet the definition of a parking lot – "a tract of land used for the temporary parking of motor vehicles when the use is not accessory to any other use".

at 2926 Porter Street, N.W. It is therefore **ORDERED** that the ZA's determination is **SUSTAINED,** and this appeal is **DENIED.**

VOTE: **3-1-1** (Marnique Y. Heath, Frederick L. Hill, and Peter G. May voting to AFFIRM the Zoning Administrator's decision and DENY the appeal; Jeffrey L. Hinkle voting by absentee ballot to grant 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: September 6, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Compensation Unit 31 (American Federation of Government Employees, Locals 631, 872, and 2553; American Federation of State, County, and Municipal Employees, Local 2091; and National Association of Government Employees, Local R3-06),	PERB Case No. 16-N-02 Opinion No. 1624
Appellant,	
and	
District of Columbia Water and Sewer Authority,	
Respondent.	

DECISION AND ORDER

Compensation Unit 31 ("Comp. Unit 31"), consisting of American Federation of Government Employees, Locals 631, 872, and 2553; American Federation of State, County, and Municipal Employees, Local 2091; and National Association of Government Employees, Local R3-06 filed a Negotiability Appeal ("Appeal") against the District of Columbia Water and Sewer Authority's ("WASA" or "Authority") written declaration of the non-negotiability of three proposals made during the parties' negotiation of a successor compensation agreement. WASA filed a timely Answer to the Appeal.

I. Standard of Review

Under D.C. Official Code §§ 1-605.02(5) and 1-617.02(b)(5), the Board is authorized to make determinations concerning whether a matter is within the scope of bargaining. The Board's

jurisdiction to decide such questions is invoked by the party presenting a proposal that has been declared nonnegotiable by the party responding to the proposal.[1]

The Board applies the U.S. Supreme Court's standard concerning subjects for bargaining established in *National Labor Relations Board v. Borg-Warner Corp.*[2] Under this standard, "the three categories of bargaining subjects are as follows: (1) mandatory subjects, over which the parties must bargain; (2) permissive subjects, over which the parties may bargain; and (3) illegal subjects, over which the parties may not legally bargain."[3]

D.C. Official Code § 1-617.08(b) provides that "[a]ll matters shall be deemed negotiable, except those that are proscribed by this subchapter." The Board has held that this language creates a presumption of negotiability.[4] D.C. Official Code § 1-617.08(b) further states that "[n]egotiations concerning compensation are authorized to the extent provided in § 1-617.16." D.C. Official Code § 1-617.16 provides in part that the "Board shall provide for collective bargaining concerning compensation under the procedures of and on the dates provided in § 1-617.17."[5] D.C. Official Code § 1-617.17(b) requires in part that management and labor "negotiate in good faith with respect to salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters."

The subjects of a negotiability appeal and the context in which their negotiability is appealed are determined by the Appellant, not the party declaring the matters nonnegotiable.[6] The Board reviews the disputed proposals and addresses each in light of the statutory dictates and relevant case law.[7]

II. Analysis of Proposals

Comp. Unit 31's proposals are set forth below. The proposals are followed by: (1) WASA's arguments in support of nonnegotiability; (2) Comp. Unit 31's arguments in support of negotiability; and (3) the Board's findings.

[1] *See* PERB Rule 532.1.
[2] 356 U.S. 3342 (1975).
[3] *Univ. of D.C. Faculty Ass'n/NEA v. Univ. of D.C.*, 29 D.C. Reg. 2975, Slip Op. No. 43 at p. 2, PERB Case No. 82-N-01 (1982).
[4] *See Int'l Ass'n of Firefighters, Local 36 v. D.C. Fire & Emergency Med. Servs. Dep't*, 51 D.C. Reg. 4185, Slip Op. No. 742, PERB Case No. 04-N-02 (2004).
[5] *See* D.C. Official Code § 1-617.16(a).
[6] *Int'l Ass'n of Firefighters, Local 36 v. D.C. Fire and Emergency Med. Servs. Dep't*, 45 D.C. Reg. 4760, Slip Op. No. 515, PERB Case No. 97-N-01 (1997).
[7] *Fraternal Order of Police/Protective Servs. Police Dep't Labor Comm. v. Dep't of Gen. Servs.*, 62 D.C. Reg. 16505, Slip Op. No. 1551 at p. 2, PERB Case No. 15-N-04 (2015).

Comp. Unit 31 Proposal 1 - Article 1, Section B:

Section B Performance-Based Bonus[8]

The parties agree that the Letter of Understanding executed on August 14, 2000 and the Memorandum of Understanding executed on September 27, 2002, regarding "classification, compensation, and performance evaluation" are no longer in effect upon execution of this Agreement. However, performance evaluations shall continue to be administered per the terms of the 'D.C. Water and Sewer Authority Union Employees Performance Evaluations Guidelines," attached at Appendix A of this Agreement.

Performance Based Bonus

Beginning with the March, 31, ~~2012~~ 2016 annual ratings and each subsequent annual rating during the term of this contract, employees covered by this Agreement shall be eligible to receive a pay for performance lump sum bonus based on the employees' base rate of compensation for the first full pay period during Fiscal Year ~~2012~~ 2016, and each subsequent Fiscal Year during the term of this contract that shall be calculated as follows:

~~1.~~ (A) Level 1 Rarely Meets Expectations, Performance Rating – 0% lump sum bonus

~~2.~~ (B) Level 2 Occasionally Does Not Meet Expectations, Performance Rating – 1% lump sum bonus

~~3.~~ (C) Level 3 Consistently Meets Expectations, Performance Rating – ~~2%~~ 3% lump sum bonus

(D) Level 4 Exceeds Expectations, Performance Rating – 4% lump sum bonus

If an employee believes that he or she should have received a higher final performance rating and therefore a higher lump sum bonus, he/she may file an appeal to the Authority's Human Resources Director, within ~~ten (10)~~ thirty (30) days of ~~the issuance~~ receipt of the rating by his/her supervisor. The Employee shall state the reasons he/she believes that the supervisor's rating should be elevated and include any relevant documentation to support

[8] Comp. Unit 31's new proposed language is underlined.

> his/her appeal. The Human Resource Director shall review the employee's appeal and, after review, shall issue Management's final decision on the rating level. The amount of the lump sum bonus shall be paid based on Management's final decision on the rating level.
>
> Disputes over performance evaluations shall not be subject to the grievance and arbitration procedure set forth in Article 17 of this Compensation Agreement.[9]

WASA: WASA notes that the Board has held that "management's right to evaluate employee performance is an exclusive one," and "is an exercise of management's rights to direct and assign work" under D.C. Official Code § 1-617.08(a)[10] WASA argues that, accordingly, Comp. Unit 31's Article 1, Section B proposal is nonnegotiable because it seeks to award pay based on a performance system that is contrary to the one the Authority is in the process of implementing."[11] Further, WASA argues that the Board has held that under D.C. Official Code § 1-617.08(a-1),[12] just because an agency has waived a management right in a past negotiation, that does not mean it has waived that same management right (or any other management rights) in any current or future negotiations.[13]

Comp. Unit 31: Comp. Unit 31 contends that D.C. Official Code § 1-617.08(a) "is not applicable to this matter because [the proposal] has no bearing on, or relevance to, the Authority's ability to exercise any of the rights under those sections.[14] Additionally, Comp. Unit 31 argues that its proposal is negotiable because, although D.C. Official Code § 1-613.53(b)[15] makes the implementation of the District's performance management system nonnegotiable, that section is not applicable to WASA under the restrictions of WASA's enabling statute—specifically D.C. Official Code § 34-2201.15(a)(1)[16]—which states that WASA is not subject to the Comprehensive Merit Personnel Act ("CMPA") except for

[9] Supplement to Comp. Unit 31's Negotiability Appeal, Ex. 2.
[10] Answer at 3-4, 6 (citing and quoting *Am. Fed'n of Gov't Emp., Local 1403 v. D.C. Office of the Corp. Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02 (July 25, 2003)).
[11] Answer at 6.
[12] D.C. Official Code § 1-617.08(a-1): "An act, exercise, or agreement of the respective personnel authorities (management) shall not be interpreted in any manner as a waiver of the sole management rights contained in subsection (a) of this section."
[13] Answer at 1-2 (citing *Am. Fed'n of Gov't Emp., Local 631 v. D.C. Water & Sewer Auth.*, 54 D.C. Reg. 3210, Slip Op. No. 877 at p. 7-9, PERB Case No. 05-N-02 (2007) (observing that pursuant to D.C. Official Code § 1-617.08(a-1), "if management has waived a management right in the past (by bargaining over that right) this does not mean that it has waived that right (or any other management right) in any subsequent negotiations")).
[14] Appeal at 3.
[15] D.C. Official Code § 1-613.53(b): "Notwithstanding any other provision of law or of any collective bargaining agreement, the implementation of the performance management system established in this subchapter is a non-negotiable subject for collective bargaining."
[16] "(a) Except as provided in this section and in § 34-2202.17(b), no provision of §§ 1-601.01 *et seq.*, shall apply to employees of the Authority except as follows: (1) Subchapters V and XVII of Chapter 6 of Title 1 shall apply to all employees of the Authority…."

subchapters V (governing PERB) and XVII (governing Labor Management Relations).[17] Comp. Unit 31 further asserts that its proposal is negotiable because WASA's enabling statute "does not provide that the Authority has a legal right to establish a performance evaluation system," and the Board "has ruled that any changes that are not mandated by statute are subject to substantive bargaining."[18] Comp. Unit 31 contends that, accordingly, since the parties "have engaged in negotiations over performance evaluations in compensation bargaining [since 2002]," and since its performance proposal is "inextricably intertwined" with compensation, the Board should find that the proposal is negotiable.[19]

Board: In *American Federation of Government Employees, Local 1403 v. District of Columbia Office of the Corporation Counsel*,[20] and similarly in *Service Employees International Union, Local 500, v. University of the District of Columbia*,[21] the Board held that a proposal that sets forth the purpose of a performance evaluation system or that contains criteria for the agency to consider for performance evaluations is nonnegotiable under D.C. Official Code § 1-617.08(a) "because it interferes with management's right to direct and assign employees" and because it "is within management's [exclusive] rights to implement a performance evaluation system." In *American Federation of Government Employees, Local 631 v. WASA*,[22] the Board also held, pursuant to D.C. Official Code § 1-617.08(a-1), that "if management has waived a management right in the past (by bargaining over that right) this does not mean that it has waived that right (or any other management right) in any subsequent negotiations."[23] Accordingly, with regard to Comp. Unit 31's Article 1, Section B proposal, it is irrelevant whether or not WASA's enabling statute empowers WASA to implement a performance evaluation system since that right, under PERB's case law, is also bestowed by D.C. Official Code § 1-617.08(a)[24] Since D.C. Official Code § 1-617.08(a) falls under subchapter XVII of the CMPA, it is unquestionably applicable to WASA under the express terms of § 34-2202.15(a)(1) in WASA's enabling statute. It is also irrelevant that WASA has negotiated with Comp. Unit 31 over performance evaluations in the past, since D.C. Official Code § 1-617.08(a-1) enables WASA to still assert its management rights in the current and any future negotiations.[25]

With regard to the proposal itself, Comp. Unit 31 states in its Appeal that the proposal creates "a method by which [an] employee's work performance is measured and establishes a bonus payout to reward adequate work performance."[26] The Board finds that this is an attempt

[17] Appeal at 4-5.
[18] Appeal at 4-5.
[19] Appeal at 3-7.
[20] Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02 (July 25, 2003).
[21] 62 D.C. Reg. 14633, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01 (2015).
[22] 54 D.C. Reg. 3210, Slip Op. No. 877, PERB Case No. 05-N-02 (2007).
[23] *Id.* at p. 7-9.
[24] *See Serv. Emp. Int'l Union, Local 500, v. Univ. of D.C.*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01; *see also Am. Fed'n of Gov't Emp., Local 1403 v. D.C. Office of the Corp. Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02.
[25] *See Am. Fed'n of Gov't Emp., Local 631 v. D.C. Water & Sewer Auth.*, Slip Op. No. 877 at p. 7-9, PERB Case No. 05-N-02.
[26] Appeal at 4.

to set forth the purpose of WASA's performance evaluation system.[27] Moreover, the Board finds that the proposal's addition of language detailing what WASA should consider when determining whether employees meet expectations, as well as its addition of a new fourth level of evaluation, constitute attempts to establish criteria for WASA to consider when conducting performance evaluations.[28] Therefore, in accordance with D.C. Official Code § 1-617.08(a), the Board finds that the proposal interferes with WASA's right to direct and assign employees and is contrary to WASA's exclusive right to implement a performance evaluation system.[29]

The Board finds that Comp. Unit 31's proposal is *nonnegotiable*.

Comp. Unit 31 Proposal 2 – Appendix A:

Due to the considerable length and complexity of Comp. Unit 31's Appendix A proposal,[30] the Board does not restate the text of the proposal here.

WASA: WASA asserts that Comp. Unit 31's Appendix A proposal is nonnegotiable because it infringes on management's rights, contrary to PERB case law.[31] WASA argues that the proposed language on page 2 that "Union employees shall not be rated on goals" serves as an "absolute restriction on the Authority's management right to direct and assign employees."[32] Further, WASA notes that Comp. Unit 31's proposed language attempts to establish criteria for evaluating union employees that are different than those that WASA has established,[33] attempts to add a fourth tier that WASA would have to consider when determining whether employees meet expectations, and attempts to prohibit WASA from issuing certain ratings to union representatives.[34] WASA contends that each of these examples, and others, "infringes directly on the Authority's right to direct, assign, and evaluate its employees, including those who serve as union representatives."[35] WASA concedes that its new performance management system, which is planned to be implemented on April 1, 2017, is subject to impact and effects bargaining.[36] WASA also concedes that "compensation proposals that seek to incorporate the performance ratings, as determined by the Authority's new system when implemented, would also be appropriate for negotiation over compensation."[37] WASA asserts, however, that Comp. Unit 31's Appendix A proposal does not do that but rather proposes Comp. Unit 31's "own set of

[27] *Serv. Emp. Int'l Union, Local 500*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01; *see also Am. Fed'n of Gov't Emp., Local 1403 v. D.C. Office of the Corp. Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02.
[28] *Serv. Emp. Int'l Union, Local 500, v. Univ. of D.C.*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01.
[29] *See Serv. Emp. Int'l Union, Local 500, v. Univ. of D.C.*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01; *see also Am. Fed'n of Gov't Emp., Local 1403 v. D.C. Office of the Corp. Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02.
[30] *See* Supplement to Comp. Unit 31's Negotiability Appeal, Ex. 6.
[31] Answer at 4.
[32] Answer at 4.
[33] Answer at 4-5.
[34] Answer at 5.
[35] Answer at 5, 10-11.
[36] Answer at 5.
[37] Answer at 5-6.

competencies, standards, and rating scales."[38] WASA argues that such restrictions are contrary to D.C. Official Code § 1-617.08(a) and the Board's case law and are therefore nonnegotiable.[39]

Comp. Unit 31: Comp. Unit 31 raises the same arguments in defense of its Appendix A proposal that it raised on behalf of its Article 1, Section B proposal.[40]

Board: As the Board noted in its analysis of Comp. Unit 31's Article 1, Section B proposal, a proposal that sets forth the purpose of a performance evaluation system or that contains criteria for the agency to consider for performance evaluations is nonnegotiable under D.C. Official Code § 1-617.08(a) "because it interferes with management's right to direct and assign employees" and because it "is within management's [exclusive] rights to implement a performance evaluation system."[41] Based on the examples WASA noted and numerous others within the proposal, and for the same reasons articulated in the Board's analysis regarding the nonnegotiability of Comp. Unit 31's Article 1, Section B proposal, the Board finds that Comp. Unit 31's Appendix A proposal attempts to set forth the purpose of WASA's performance evaluation system and to establish criteria for WASA to consider when conducting performance evaluations.[42] Therefore, in accordance with D.C. Official Code § 1-617.08(a), the Board finds that the proposal interferes with WASA's right to direct and assign employees and is contrary to WASA's exclusive rights to implement a performance evaluation system.[43]

The Board finds that Comp. Unit 31's proposal is *nonnegotiable*.

Comp. Unit 31 Proposal 3 – (New Article) New and Existing Job Review Standards:

New Article

New and Existing Job Review Standards

The Union and the Authority agree, upon execution of this Agreement, to form a joint committee to develop methods for the establishment of wages for current and new positions, wage increases for promotions of bargaining unit employees to positions, and methods for review of jobs of bargaining unit employees when the Authority adds new skills, duties, qualifications, certifications, licensing, and/or new technology to positions. The parties shall

[38] Answer at 6.
[39] Answer at 10-11.
[40] Appeal at 2-7.
[41] *Serv. Emp. Int'l Union, Local 500, v. Univ. of D.C.*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01; *see also Am. Fed'n of Gov't Emp., Local 1403 v. Dist. of Columbia Office of Corp. Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02.
[42] *Serv. Emp. Int'l Union, Local 500, v. Univ. of D.C.*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01.
[43] *See Serv. Emp. Int'l Union, Local 500, v. Univ. of D.C.*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01; *see also Am. Fed'n of Gov't Emp., Local 1403 v. D.C. Office of Corp. Counsel*, *supra*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02.

> negotiate a Memorandum of Agreement implementing the results, which arise from the actions of the Joint Committee.
>
> The Authority agrees, prior to implementation, to negotiate wages for existing positions when new skills, duties, qualifications, licensing, certification, and/or new technology are added to existing positions.[44]

WASA: WASA asserts that Comp. Unit 31's proposed New Article is nonnegotiable because the proposal's requirement that a joint committee be formed to develop "methods for the establishment of wages for current and new positions" and for the "review of jobs of bargaining unit employees when the Authority adds new skills, duties, qualifications, certifications, licensing, and/or technology to positions" infringes on its management rights under D.C. Official Code § 1-617.08(a)(5)(B) to determine the "types" and "grades" of positions.[45] A "grade," WASA posits, is a standardized "range of compensation across equivalent skill sets and responsibilities."[46] WASA argues that the proposal "seeks to have the parties share in the process of establishing a 'grade' for an existing or new position," and to therefore "share rights that were intended to reside exclusively with management."[47] WASA contends, therefore, that the proposal is nonnegotiable despite being "disguised as an effort to determine compensation."[48] WASA further argues that the proposal's requirement that the parties negotiate wages "prior to implementation" whenever WASA adds new requirements and/or qualifications to existing positions infringes upon its management rights under D.C. Official Code § 1-617.08(a) and is contrary to PERB case law.[49] WASA contends that it does not object to negotiating "over the wages associated with a job [after it has been] legally placed within a grade" under the "grading system established by the Authority," but asserts that management has the exclusive rights to establish its own pay grade system and to determine the specific "grade" to which each position gets assigned.[50]

Comp. Unit 31: Comp. Unit 31 argues that its proposed New Article is negotiable because it "in no way infringes upon or restricts management's right to determine the number, types, and grades of positions."[51] Comp. Unit 31 concedes that D.C. Official Code § 1-617.08(a) gives management the "right to determine the number, types and grades of positions."[52] Comp. Unit 31 contends that, rather, its proposal "provides that the parties will establish a joint committee and will negotiate concerning the wages for new positions, wage increases for bargaining unit

[44] Supplement to Comp. Unit 31's Negotiability Appeal, Ex. 4.
[45] Answer at 11.
[46] Answer at 11.
[47] Answer at 11.
[48] Answer at 11-12.
[49] Answer at 12-13 (citing *Am. Fed'n of Gov't Emp., Local 631 v. D.C. Water & Sewer Auth.*, Slip Op. No. 877 at p. 9-10, PERB Case No. 05-N-02 (wherein the Board found that a proposal that would have required WASA to bargain over changes to the job descriptions of existing positions "prior to implementation" was nonnegotiable because it represented "a restriction on management's right to assign to work")).
[50] Answer at 13-14.
[51] Appeal at 7.
[52] Appeal at 8.

employees, and method [*sic*] for the parties to jointly review the compensation that should accompany the Authority's decision to add new skills, duties, qualifications, licensing, certifications, and technology requirements to bargaining unit positions."[53]

Board: D.C. Official Code § 1-617.08(a) grants management the exclusive rights to "direct employees of the agencies," to "hire, promote, transfer, assign, and retain employees in positions within the agency…," to "maintain the efficiency of the [agency's operations]," and to determine "its budget," the "number, types, and grades of positions," and the "technology of performing the agency's work." With regard to collective bargaining concerning compensation, D.C. Official Code § 1-617.17(b) provides in part that management and labor must "negotiate in good faith with respect to salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters." Reading these two provisions together, it is evident that management has the exclusive right to establish its own pay grade methodology, and to determine the grades to which each of its positions is assigned.[54] However, once that determination has been made, "salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters" are appropriate subjects of bargaining in compensation negotiations.[55]

Here, Comp. Unit 31's proposed New Article requires more than simply bargaining over wages, within-grade increases, premium pay, etc. Indeed, it attempts to require WASA to bargain over the development of "methods for the establishment of wages"—or in other words, the development of a pay grade system or methodology. As noted, WASA has the exclusive right to develop its own methodology by which pay grades are established.

Additionally, the proposal attempts to compel WASA to bargain over the development of "methods for review of jobs of bargaining unit employees" whenever WASA adds new job requirements and/or qualifications to the bargaining unit members' positions. The Board notes that that language would require WASA to bargain over much more than just wages, within-grade increases, premium pay, etc. Thus, it is not appropriate for compensation bargaining.

The proposal also attempts to compel WASA to negotiate over wages "prior to implementation" of any additions it makes to the "skills, duties, qualifications, licensing, certification, and/or new technology" of existing positions. In *American Federation of Government Employees, Local 631 v. WASA*,[56] the Board found that a proposal that attempted to require WASA to bargain over changes to the job descriptions of existing positions "prior to implementation" was nonnegotiable because it represented "a restriction on management's right to assign to work." The instant proposal's "prior to implementation" clause would impose a similar restriction on WASA's right to add new qualifications to existing positions.

Accordingly, the Board finds that, within the context of compensation bargaining, Comp. Unit 31's proposed New Article infringes upon WASA's exclusive rights to "direct employees

[53] Appeal at 7-8.
[54] *See* D.C. Official Code § 1-617.08(a)(1), (2), (4), & (5)(A)-(C).
[55] *See* D.C. Official Code § 1-617.17(a)-(b).
[56] 54 D.C. Reg. 3210, Slip Op. No. 877 at p. 9-10, PERB Case No. 05-N-02 (2007).

of the agencies," to "hire, promote, transfer, assign, and retain employees in positions within the agency…," to "maintain the efficiency of the [agency's operations]," and to determine "its budget," the "number, types, and grades of positions," and the "technology of performing the agency's work."

The Board finds that Comp. Unit 31's proposal is *nonnegotiable*.

ORDER

IT IS HEREBY ORDERED THAT:

1. Comp. Unit 31's Article 1, Section B proposal is *nonnegotiable*.

2. Comp. Unit 31's Appendix A proposal is *nonnegotiable*.

3. Comp. Unit 31's proposed New Article is *nonnegotiable*.

4. 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 Ann Hoffman and Douglas Warshof. Member Barbara Somson was not present.

May 18, 2017

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-N-02, Op. No. 1624 was transmitted to the following parties on this the 9th day of June, 2017.

Eric Bunn, Sr.
National Vice President, AFGE, District 14
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Clifford Mustaafa Dozier
Dan T. Pribich
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/s/ Sheryl Harrington
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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
American Federation of Government Employees, Locals 1000, 2725, 2741, 2978, 3444, and 3721,	)	PERB Case No. 17-I-03
Petitioner,	)	Opinion No.: 1631
	)	**Motion for Reconsideration**
and	)	
DHS, DDS, DYRS, DOES, DDOT, DMV, DFHV, DHCD, DCHA, DCRA, DOEE, OSSE, DRP, DOH, MPD, FEMS,	)	
Respondent.	)	

DECISION AND ORDER

I. Statement of the Case

Before the Board is a Motion for Reconsideration ("Motion") filed by the American Federation of Government Employees, Locals 1000, 2725, 2741, 2978, 3444, and 3721 ("Union" or "Petitioner"). The Union is requesting the Board to reconsider its Decision and Order in Slip Opinion 1612, PERB Case 17-I-03 (February 24, 2017).

II. Analysis

It is well settled that a motion for reconsideration cannot be based upon mere disagreement with the Board's initial decision and the moving party must provide authority which compels reversal.[1] Absent such authority, PERB will not overturn its decision.[2] After

[1] *AFSCME District Council 20, Local 2921 and District of Columbia Public Schools*, 62 D.C. Reg. 9200, Slip Op. No. 1518 at 3-4, PERB Case No, 12-E-10 (2015). See also, *F.O.P. /Metro. Police Dep't Labor Comm. v. Metro, Police Dep't*, Slip Op. No. 1554 at 8-9, PERB Case No. ll-U-17 (2015); *Rodriguez v. D.C. Metro. Police Dep't*, 59 D.C. Reg. 4680, Slip Op. No. 954 at 12, PERB Case No. 06-U-38 (2010).
[2] *Id*.

careful review, the Board has determined that the Motion is simply a disagreement with the Board's previous decision and provides no authority which compels reversal. For these reasons, the Board denies the Union's Motion for Reconsideration of the Board's Decision and Order in Slip Opinion 1612.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Agencies' Motion for Reconsideration is denied.
2. Pursuant to Board Rule 559, this Decision and Order shall become final thirty (30) days after issuance unless a party filed a motion for reconsideration or the Board reopens the case within fourteen (14) days after issuance of the Decision and Order.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Members Douglas Warshof, Mary Anne Gibbons and Barbara Somson.

July 27, 2017

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-I-03, Op. No. 1631 was sent by File and ServeXpress to the following parties on this the 31st day of July, 2017.

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/s/ Sheryl Harrington
Administrative Assistant

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Rayshawn Douglas	)	PERB Case No. 15-U-32
Complainant,	)	
	)	Opinion No. 1632
v.	)	
District of Columbia Housing Authority,	)	
Respondent.	)	

DECISION AND ORDER

I. Introduction

On July 17, 2015, Rayshawn Douglas ("Ms. Douglas") filed an unfair labor practice complaint ("Complaint"). The Complaint alleged that the District of Columbia Housing Authority ("DCHA") discriminated against her in violation of section 1-617.04(a)(1), (3) and (4) of the D.C. Official Code ("CMPA"), because she engaged in protected union activity. On August 17, 2015, DCHA filed a Motion to Dismiss. The matter was sent to a hearing and the Hearing Examiner's Report and Recommendation ("Report and Recommendation") is before the Board for disposition. No exceptions were filed in this case.

For the reasons stated herein, the Board adopts the Hearing Examiner's Report and Recommendations and the Complaint is dismissed with prejudice.

II. Statement of the Case

In August of 2011, Ms. Douglas, a Staff Assistant with DCHA, received an 11-day disciplinary suspension.[1] After filing a grievance, she was subsequently reimbursed for wages lost due to the suspension.[2] While there is some discrepancy regarding the dates of reimbursement, it is uncontested that Ms. Douglas was reimbursed for most, if not all, of the 11 days of wages due to the suspension.

[1] Report and Recommendations at 2.
[2] Report and Recommendations at 2-3.

On March 19, 2015, DCHA notified Ms. Douglas that she was being disciplined again.[3] As a result, she served a 14-day suspension and then filed a grievance regarding the disciplinary action. After a review and investigation, DCHA reduced the discipline to a two day suspension and reimbursed Ms. Douglas for 12 days of lost wages due to the suspension.[4]

In this case, Complainant asserts that the 2015 suspension was in retaliation for her exercise of her rights under the grievance procedure in connection with the 2011 suspension.

III. Hearing Examiner's Report and Recommendation

A. Factual Findings

The threshold issue determined by the Hearing Examiner was whether PERB has substantive jurisdiction over the claims made by Ms. Douglas. DCHA claimed that the allegations fell outside the Board's authority under the CMPA and as a result should be dismissed. DCHA cited numerous cases which state that the Board is empowered to resolve statutory violations but not contractual violations such as a collective-bargaining agreement ("CBA").[5] The Hearing Examiner found that the Board does have jurisdiction over the claims at issue because the issues in this case do not revolve around competing CBA interpretations.[6]

The Hearing Examiner went on to explain that in order for Ms. Douglas to succeed on her claim of retaliation, she must show that the 2011 disciplinary action was at least a motivating factor in DCHA's decision to discipline her again in 2015.[7] The Hearing Examiner stated that a successful retaliation claim would find remedies unavailable in a contract action.[8]

The Hearing Examiner next determined whether the claim established a prima facie case for retaliation.[9] In order to determine whether the disciplinary action was in retaliation for engaging in protected union activity, the Board has adopted the test formulated by the NLRB case *Wright Line and Lamoreux.*[10] The *Wright Line* test states that in order to establish a prima facie case the complainant must show that the employee engaged in protected union activities, the agency knew about the employee's protected union activities, and as a result of anti-union animus or retaliatory animus, the agency took adverse employment action against the employee.[11] The complaining party has the initial burden of establishing a prima facie case by showing that the union or other protected activity was a motivating factor in the employer's

[3] Report and Recommendations at 2.
[4] Report and Recommendations at 2.
[5] Report and Recommendations at 4.
[6] Report and Recommendations at 4.
[7] Report and Recommendations at 4.
[8] Report and Recommendations at 4.
[9] Report and Recommendations at 4.
[10] 251 N.LR.B. 1083, 1089 (1980), enforced, 622 F.2d 899 (1st Cir. 1981); See also *Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comms. v. D.C. Metro. Police Dep't*, 63 D.C. Reg. 4589, PERB Case No. 11-U-20 (2016).
[11] *Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comms. v. D.C. Metro. Police Dep't*, 63 D.C. Reg. 4589, PERB Case No. 11-U-20 (2016).

disputed action. The burden then shifts to the employer to demonstrate that the same disputed action would have taken place notwithstanding the protected activity.[12]

It is uncontested that Ms. Douglas engaged in protected union activities.[13] The agency was aware that Ms. Douglas engaged in protected union activity because she made use of DCHA's grievance procedure for protesting a disciplinary action.[14] However, the Hearing Examiner found that the claim failed the *Wright Line* test because Ms. Douglas was not able to show any evidence of anti-union animus.[15] In fact, the Hearing Examiner states that Ms. Douglas offered "not a scintilla of evidence sufficient to establish a prima facie case of retaliation."[16] Without establishing anti-union animus, it cannot be a motivating factor of the adverse employment action.[17] According to the Hearing Examiner, there was no evidence of a connection between the disciplinary action and anti-union animus.[18] Without a connection between anti-union animus and DCHA's actions, the Complaint did not present a prima facie case of retaliation.

B. Recommendations

The Hearing Examiner found that, while the Board did have jurisdiction over this case, the Complainant failed to establish a prima facie case for anti-union retaliation.[19] The Report and Recommendations concluded that the motion to dismiss should be granted and the case be dismissed with prejudice.[20]

IV. Discussion

The Board will affirm a Hearing Examiner's findings if the findings are reasonable, supported by the record, and consistent with Board precedent.[21] Issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner.[22] Mere disagreements with the Hearing Examiner's findings and/or challenging the Hearing Examiner's findings with competing evidence do not constitute proper exceptions if the record

[12] *AFSCME, Local 2401 v. D.C. Dep't of Human Servs*. 48 D.C. Reg. 3207, Slip Op. No. 644 at pp. 5-6, PERB Case No. 98-U-05 (2001).
[13] Report and Recommendations at 5.
[14] It should be noted that Ms. Douglas' supervisor, Keisha Williams, was not her supervisor at the time of the 2011 disciplinary action and stated during the hearing that she was not aware of the previous disciplinary action until these proceedings began.
[15] Report and Recommendations at 5.
[16] Report and Recommendations at 5.
[17] Report and Recommendations at 5.
[18] Report and Recommendations at 5.
[19] Report and Recommendations at 6.
[20] Report and Recommendations at 6.
[21] See *Am. Fed'n of Gov't Emp., Local 872 v. D.C. Water and Sewer Auth*., 52 D.C. Reg. 474, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).
[22] *Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comms. v. D.C. Metro. Police Dep't*, 62 D.C. Reg. 3544 Op. No. 1506, PERB Case No. 11-U-50(a) (2015).

contains evidence supporting the Hearing Examiner's conclusions.[23] Neither party filed exceptions to the Hearing Examiner's Report; however, DCHA submitted a post hearing brief to the Arbitrator on February 19, 2017.[24]

A. Jurisdiction

DCHA requests the Board grant its motion to dismiss as the case is not within the Board's jurisdiction.[25] DCHA argues that the Complaint requires the Board to replace the negotiated grievance and arbitration process between AFGE 2725 and DCHA.[26] According to DCHA, in order to adjudicate this Complaint, the Board will have to interpret the parties' CBA. The CBA contains procedures for an employee to advance a grievance to arbitration without the union's involvement. Ms. Douglas failed to follow these procedures and now the Board must stand in the place of the arbitrator.[27] DCHA states that the Board does not have jurisdiction over this case and the matter should be dismissed with prejudice.

The Board rejects DCHA's assertion that the Board does not have jurisdiction. The CMPA empowers the Board to resolve statutory violations, but not contractual violations. DCHA relies on PERB Case No. 08-U-22 which states, "[I]f the record demonstrates that an allegation concerns a statutory violation of the CMPA, then even if it also concerns a violation of the parties' contract, the Board still has jurisdiction over the statutory matter and can grant relief accordingly if the allegation is proven."[28] The Board does not have jurisdiction if it must interpret the parties' CBA in order to determine if there has been a violation of the CMPA. The Complaint in this case asks the Board to determine whether there has been a violation of the CMPA based on retaliation for protected union activity. Regardless of the CBA, the CMPA provides a remedy for such a violation. If the record demonstrates that the allegations do concern violations of the CMPA, then the Board unquestionably has jurisdiction over those allegations.[29]

B. Prima Facie Case of Retaliation

If the Board declines to grant the motion to dismiss for lack of jurisdiction, DCHA requests the Board dismiss the case for failure to meet the burden of proof to establish an unfair labor practice.[30] DCHA states that Ms. Douglas failed to provide sufficient evidence to support her claim that there was anti-union animus or retaliatory animus by the agency. DCHA presented evidence at the hearing to show that the discipline was not because of any union activity but rather because Ms. Douglas disregarded orders from her superiors and failed to

[23] *Sinobia Brinkley v. Fraternal Order of Police/Metro.Police Dep't Labor Comms., District 20, Local 2087*, 60 D.C. Reg. 17387, Slip Op. No. 1446, PERB Case No. 10-U-12 (2013).
[24] Report and Recommendations at 2
[25] DCHA Post-Hearing Br. 4.
[26] DCHA Post-Hearing Br. 5.
[27] DCHA Post-Hearing Br. 6.
[28] *Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comms. v. D.C. Metro. Police Dep't,* 62 D.C. Reg. 13348, Slip Op. No. 1534 at 7, PERB Case No. 08-U-22 (2015).
[29] *Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comms. v. D.C. Metro. Police Dep't,* 60 D.C. Reg. 9212, Slip Op. No. 1391, PERB Case Nos. 09-U-52 and 09-U-53(2013).
[30] DCHA Post-Hearing Br. 6.

complete assignments in a timely manner.[31] If the Board does not dismiss this case for a lack of jurisdiction, DCHA requests the Board dismiss this case for failing to show a violation of the CMPA.[32]

The Hearing Examiner found that Ms. Douglas failed to meet her burden under the *Wright Line* test. Ms. Douglas, the complaining party, must show that anti-union animus and/or retaliation was at least a motivating factor in a decision to take adverse employment action.[33] According to the Hearing Examiner, Ms. Douglas did not meet the required burden of proof to show a prima facie case of anti-union animus and retaliation. As stated earlier, issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner. A review of the record reveals that the Hearing Examiner's findings and conclusion are reasonable, supported by the record and consistent with Board precedent.

V. Conclusion

No exceptions were filed to the Hearing Examiner's recommendation that the Complaint be dismissed. Pursuant to Board Rule 520.14, the Board finds the Hearing Examiner's conclusions and recommendations reasonable, supported by the record and consistent with Board precedent. Accordingly, the Board adopts the Hearing Examiner's Report and the Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. Rayshawn Douglas' Unfair Labor Practice Complaint is dismissed with prejudice.

2. Pursuant to Board Rule 559, this Decision and Order shall become final thirty (30) days after issuance unless a party files a motion for reconsideration or the Board reopens the case within fourteen (14) days after issuance of the Decision and Order.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Members Douglas Warshof, Barbara Somson and Mary Anne Gibbons.

July 27, 2017

Washington, D.C.

[31] DCHA Post-Hearing Br. 8.
[32] DCHA Post-Hearing Br. 8.
[33] *Id.*

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-U-32, Op. No. 1632 is being transmitted to the following parties on this the 31st day of July 2017.

Rayshawn Douglas
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via U.S. Mail

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via File&ServeXpress

/s/ Merlin George
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Anitha L. Davis, Complainant,	)	PERB Case No. 15-S-01
v.	)	Opinion No. 1633
American Federation of State County & Municipal Employees Local Union No. 2921,	)	
American Federation of State County & Municipal Employees Council 20,	)	
American Federation of State County & Municipal Employees International Union,	)	
Respondents.	)	

DECISION AND ORDER

I. Statement of the Case

On June 10, 2015, Anitha L. Davis ("Complainant") filed a Standards of Conduct Complaint ("Complaint"), alleging the American Federation of State, County, and Municipal Employees ("AFSCME"), AFSCME Local Union No. 2921, AFSCME Council 20, and AFSCME International (collectively referred to as "Respondents") breached their duty of fair representation, in violation of the Comprehensive Merit Personnel Act ("CMPA"). On June 25, 2015, Respondents AFSCME, AFSCME Local Union No. 2921 and AFSCME Council 20 submitted a joint answer and motion to dismiss the Complaint on grounds that it was untimely filed, failed to state a claim for which relief could be granted, and that Complainant lacked standing to bring her claims. The motion to dismiss was denied. On, July 7, 2015, Ms. Davis moved for summary judgment. The matter was sent to a hearing. The Hearing Examiner's Report and Recommendation ("Report and Recommendation") is before the Board for disposition. No exceptions were filed in the case.

For the reasons stated herein, the Board adopts the Hearing Examiner's Report and Recommendations and the Complaint is dismissed with prejudice.

II. Hearing Examiner's Report and Recommendation

A. Factual Findings

Ms. Davis was an administrative aide with the District of Columbia Public Schools ("DCPS"). On May 24, 2013, she was notified that her position was being abolished pursuant to a reduction in force ("RIF") effective August 16, 2013.[1] Ms. Davis filed a petition of appeal concerning the RIF with the District of Columbia Office of Employee Appeals ("OEA") as well as a Standards of Conduct Complaint with the Board, PERB Case No. 14-S-01, against AFSCME for failure in their duty to represent her.[2]

On May 2, 2014, AFSCME agreed that a member of its staff would represent her in her appeal to OEA.[3] Stephen White, an employee of AFSCME, was identified in OEA's Initial Decision as Ms. Davis' Union Representative.[4] On December 30, 2014, OEA issued an Initial Decision upholding DCPS's actions regarding the RIF.[5]

After receiving OEA's decision, Ms. Davis sent a letter to all three Respondents regarding the OEA procedures for appeal. Ms. Davis stated that the deadline to file an appeal was impending and her appointed AFSCME representative had not contacted her concerning the appeal. According to Ms. Davis, this was a breach of the AFSCME's duty to represent her.[6] Ms. Davis herself filed a petition for review with OEA on February 4, 2015.[7]

In the case at hand, the Hearing Examiner stated that the Complaint, which was submitted *pro se*, lacked clarity about certain factual matters such as what collective bargaining agreement was in force during the period between Ms. Davis's loss of her job and her filing of the Complaint in June of 2015, as well as what specific failures on the part of the AFSCME form the basis of her Complaint.[8] To clarify these matters, the Hearing Examiner conducted extensive off the record discussions with Ms. Davis, her representative, and the representatives of AFSCME during the hearing.[9] Ms. Davis agreed on the record that her Complaint related solely to her claim that AFSCME failed in its duty to represent her in her OEA appeal.[10]

According to the Hearing Examiner, although Ms. Davis's efforts to gain assistance for her appeal petition took place over several weeks, by February 4, 2015, it was clear she was not

[1] Report and Recommendations at 2-3.
[2] Report and Recommendations at 3.
[3] Report and Recommendations at 3.
[4] Report and Recommendations at 3.
[5] Report and Recommendations at 3.
[6] Report and Recommendations at 3.
[7] Report and Recommendations at 4.
[8] Report and Recommendations at 5.
[9] Report and Recommendations at 5.
[10] *See* Transcript at 18-20.

going to receive the desired assistance because, at this point, she filed the appeal herself.[11] The Complaint was submitted to the Board on June 10, 2015, more than 120 days after February 4, 2015. The Hearing Examiner concluded that under PERB Rule 544.4 the Complaint was untimely filed.[12]

B. Recommendations

The Hearing Examiner found that the Complaint was untimely and recommended that it be dismissed in its entirety with prejudice. As a result of this finding, the Hearing Examiner found it unnecessary to make any further findings with respect to the merits of the underlying complaint.[13]

III. Discussion

The Board will affirm a Hearing Examiner's findings and conclusions if they are reasonable, persuasive, supported by the record, and consistent with PERB precedent.[14] Determinations concerning the admissibility, relevance and weight of evidence are reserved to the Hearing Examiner.[15] Issues concerning the probative value of evidence are also resolved to the Hearing Examiner.[16] In this case, no Exceptions were filed by either party, and the Board has previously held that "whether exceptions have been filed or not, the Board will adopt the hearing examiner's recommendations if it finds, upon full review of the record, that the hearing examiner's analysis, reasoning and conclusions' are 'rational and persuasive.'"[17]

As a threshold issue, it is necessary to determine whether the Complaint was timely filed. PERB Rule 544.4 states that a complaint alleging a standard of conduct violation shall be filed no later than 120 days from the date the alleged violation(s) occurred. In order to determine when the basis of the violation occurred, the Board looks to when the Complainant became aware of the violation. As stated earlier, Ms. Davis agreed that the Complaint relates solely to AFSCME's failure to represent her in her OEA appeal. The Hearing Examiner determined that February 4, 2015, should be the start date of the alleged violation because at this point Ms. Davis did not expect any representation from AFSCME.[18] Based on this interpretation, the Complaint was untimely under PERB Rule 544.4. Board rules governing the initiation of actions before the Board are mandatory.[19] Neither the Board nor PERB rules allow an exception for extending the deadline in the initiation of this type of action.

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[11] Report and Recommendations at 5.
[12] Report and Recommendations at 5.
[13] Report and Recommendations at 5.
[14] *Am. Fed'n of Gov't Emp., Local 1000 v. D.C. Dep't of Emp. Svcs.*, Slip Op. No. 1555, PERB Case No. 13-U-03 (November 19, 2015)
[15] *Hoggard v. D.C. Pub. Sch.*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20 (1996).
[16] *Am. Fed'n of Gov't Emp., Local 2725 v. D.C. Hous. Auth.*, 45 D.C. Reg. 4022, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07 (1998).
[17] *Council of Sch. Officers, Local 4 v. D.C. Pub. Sch.*, 59 D.C. Reg. 6138, Slip Op. No. 1016 at 6, PERB Case No. 09-U-08 (2012).
[18] Report and Recommendations at 5.
[19] *D.C. Pub. Employee Relations Bd. v. D.C. Metro. Police Dep't*, 593 A.2d 641 (D.C. 1991). *See also Jones-Patterson v. SEIU*, 62 D.C. Reg. 16471, Slip Op. No. 1546, PERB Case No. 14-S-06 (2015).

The Board has consistently acknowledged that *pro se* litigants generally lack the same level of expertise and experience as attorneys and that the Board does not hold *pro se* parties to the same standard required of parties represented by counsel.[20] A *pro se* litigant is entitled to a liberal construction of his/her pleadings when determining whether a proper cause of action has been alleged.[21] Using this approach, Ms. Davis's standards of conduct complaint could be construed as an unfair labor practice complaint based on the Respondent's duty of fair representation.[22] PERB Rule 520.4 states that an unfair labor practice complaint shall be filed no later than 120 days after the date on which the alleged violation(s) occurred. The deadlines for filing an unfair labor practice complaint and a standards of conduct complaint are identical. Under PERB rules, Ms. Davis' Complaint would still be untimely even if it were construed as an unfair labor practice complaint.

IV. Conclusion

The Board finds that the Hearing Examiner's findings and conclusions are reasonable, persuasive, supported by the record, and consistent with Board precedent. Ms. Davis's Complaint is untimely under PERB Rule 544.4, therefore it should be dismissed and no findings need to be made regarding the underlying merits of the Complaint. The Board adopts the Hearing Examiner's Report and Recommendation.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed with prejudice.

2. Pursuant to Board Rule 559, this Decision and Order shall become final thirty (30) days after issuance unless a party files a motion for reconsideration or the Board reopens the case within fourteen (14) days after issuance of the Decision and Order.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Members Douglas Warshof, Barbara Somson and Mary Anne Gibbons.

July 27, 2017

Washington, D.C.

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[20] *See Zenian v. Am.. Fed'n of State, Cnty. and Mun. Emps., Local 2743*, 59 D.C. Reg. 3601, Slip Op. No. 890, PERB Case No. 04-U-30 (2007).
[21] *Allison v. Fraternal Order of Police/Dep't of Corr. Labor Comm.*, 61 D.C. Reg. 7583, Slip Op. No. 1477, PERB Case No. 14-S-04 (2014).
[22] Although Ms. Davis was represented by an attorney at the hearing, she filed the Complaint *pro se.* PERB has no record of any representative filing an appearance on her behalf.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-S-01, Op. No. 1633 is being transmitted to the following parties on this the 31st day of July 2017.

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/s/ Merlin George
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Michael P. Roney,	
Complainant,	PERB Case No. 15-U-03
	Opinion No. 1634
v.	
Clifford Lowery in his individual capacity and Gina Walton, AFGE 1975 President.	
Respondents.	

DECISION AND ORDER

This matter is before the Board following a hearing on the damages phase of the case. Having found in *Roney v. Lowery*, 63 D.C. Reg. 4603, Slip Op. No. 1565, PERB Case No. 15-U-03 (2016), ("Opinion No. 1565") that Respondent Clifford Lowery, AFGE 1975 President ("Respondent Lowery") breached his duty of fair representation to Complainant Michael P. Roney ("Complainant" or "Roney") in the course of representing him in an appeal of his termination to the Office of Employee Appeals ("OEA"), the Board ordered a hearing to determine whether Roney would have prevailed in the appeal but for Respondent Lowery's breach and, if so, what monetary relief should be awarded. The Hearing Examiner found that Roney did not prove that he would have prevailed and recommended dismissal of the case. We adopt his recommendation.

I. Statement of the Case

A. Pleadings

Roney's complaint alleged numerous acts and omissions of Respondent Lowery that were adverse to his OEA appeal and that culminated in the dismissal of his appeal. The complaint prayed for back pay and other remedies to make Roney whole. In the absence of an

answer from Respondent Lowery, he was "deemed to have admitted the material facts alleged in the complaint."[1]

In Opinion No. 1565, the Board stated that the undisputed material facts of the case are as follows.[2]

Complainant was employed by the D.C. Department of Transportation ("DOT") as a civil engineer technician. Complainant sought the assistance of Respondent Lowery in disciplinary proceedings brought against him by DOT, but Respondent Lowery did not reply to any of Complainant's requests for his services. "This directly affected my chances of retaining my position negatively," Complainant states.[3] On January 10, 2012, DOT issued to Complainant a notice of its decision to remove him from his position.[4]

Subsequently, Respondent Lowery represented Complainant at a mediation on April 11, 2012. Respondent Lowery advised Complainant not to accept an offer to resign because he was certain he could win Complainant's case. Complainant did as he was advised and told the mediator that the relief he sought was to be returned to his position and to be made whole.[5]

Respondent Lowery informed Complainant that he would represent him in the subsequent appeal of his termination to OEA.[6] On March 28, 2014, an administrative judge at OEA held a status conference on Complainant's appeal. Respondent Lowery represented Roney at the conference. The administrative judge orally gave DOT until April 25, 2014, to submit its brief and gave Roney until May 23, 2014, to submit his brief.[7] A written order to that effect was mailed to Roney and Lowery "as all correspondence concerning this matter has been."[8]

After Complainant repeatedly called and e-mailed Respondent, the two met and discussed the content of the response they would submit to OEA. Respondent Lowery said he would prepare a letter, hand deliver it to OEA by May 23, and send Complainant a draft as well. Complainant did not hear from Respondent Lowery after the meeting. Complainant assumed that Respondent Lowery had done as he had promised until Complainant received from OEA a "show cause order" dated June 3, 2014.[9] The show cause order issued by the OEA administrative judge stated that the employee's brief was due May 23, 2014, but had not been filed. The administrative judge ordered the employee to submit a statement of good cause for his failure to file timely along with his brief on or before June 9, 2014.[10] After making telephone calls to Respondent Lowery and leaving messages that were not returned, Complainant e-mailed

[1] PERB R. 520.7.
[2] *Roney v. Lowery*, 63 D.C. Reg. 4603, Slip Op. No. 1565 at 2-4, PERB Case No. 15-U-03 (2016).
[3] Compl. ¶ 1.
[4] Compl. ¶¶ 1-3, Ex. A.
[5] Compl. ¶ 4.
[6] Compl. ¶ 1.
[7] Compl. ¶ 5.
[8] Compl. ¶ 5; Compl. Ex. D.
[9] Compl. ¶ 5.
[10] Compl. Ex. E.

Respondent Lowery on June 4, 2014, attaching the show cause order and stating, "If you need an excuse just blame it on me."[11]

Respondent Lowery answered a call from Complainant on June 6, 2014, and said that he had been hospitalized the past week but was now back from the hospital. Respondent Lowery promised to take care of the letter and to hand deliver it to OEA on time.[12]

On June 14, 2014, Respondent Lowery received OEA's Initial Decision.[13] The Initial Decision, issued June 12, 2014, stated, "To date, Employee has failed to respond to both the Post Status Conference Order and the Show Cause Order. The record is now closed."[14] That same day, Complainant called, texted, and e-mailed Respondent Lowery to no avail. Eleven days later Respondent Lowery took one of Complainant's calls. Complainant states, "I asked him if I was going to get another shot at my appeal, and he said yes. Of course this led me to believe that he was going to, or already had, file [*sic*] the Petition for Review, as allowed within 35 days of the Initial Decision."[15]

On July 13, 2014, Complainant's case appeared on OEA's website as closed, and on that date Complainant tried to contact Respondent Lowery by e-mail.[16] Complainant states, "Since time was getting close and Mr. Lowery's record of getting back to me was not good, I contacted AFGE[']s District 14 National Representative . . . [and] our shop steward. . . ."[17] The shop steward told Complainant that he spoke to Respondent Lowery about the case and Respondent Lowery said he was going to speak to the union's lawyers about it. That was the last response Complainant received from anyone connected with AFGE 1975 or District 14 despite numerous calls and e-mails. Complainant states that thereafter "time lapsed, case closed, and I could have taken other steps to be represented had I not been led to believe that the union had control of this matter."[18]

B. Determination that an Unfair Labor Practice Was Committed

In Opinion No. 1565, the Board held that the above undisputed facts established that Respondent Lowery's bad faith in misleading Roney into thinking that Respondent Lowery would file a petition for review of the dismissal of the appeal and then failing to file such petition for review constituted a breach of the duty of fair representation by Respondent Lowery individually and in his official capacity as president of AFGE 1975. Although the Complaint was not filed timely with respect to Respondent Lowery's earlier acts and omissions in the course of the appeal, those acts and omissions helped demonstrate that Lowery's broken promise to file a petition for review was no accident but was dishonest conduct establishing bad faith.[19]

[11] Compl. Ex. F.
[12] Compl. ¶ 5.
[13] Compl. ¶ 5.
[14] Compl. Ex. G.
[15] Compl. ¶ 6.
[16] Compl. ¶6, Ex. H.
[17] Compl. ¶ 6.
[18] Compl. ¶ 6.
[19] *Roney v. Lowery*, 63 D.C. Reg. 4603, Slip Op. No. 1565 at 6-8, PERB Case No. 15-U-03 (2016).

The Board ordered Respondent Lowery to cease and desist from breaching his duty to fairly represent Complainant; cease and desist from interfering with, restraining, or coercing, in any like or related manner, employees in the exercise of rights guaranteed by the Comprehensive Merit Personnel Act; post a notice of his violation; and take the necessary steps to reinstate the Complainant's OEA appeal within thirty days. The Board's order also directed the procedures to be taken if the appeal were not reinstated:

> In the event Complainant's appeal cannot be reinstated or has not been reinstated within sixty (60) days of service of this Decision and Order, the Board orders that the case be referred to a hearing examiner to determine whether the Complainant would have prevailed in his appeal but for Respondent's breach of the duty of fair representation in failing to file a petition for review. If the hearing examiner determines that the Complainant has shown by a preponderance of the evidence that the appeal would have prevailed, then the hearing examiner shall recommend to the Board the appropriate monetary relief.[20]

Respondent Lowery, through counsel, posted a notice furnished to him by the Board and filed with OEA a "Motion to Re-open" the case. OEA treated the motion as a petition for review and denied it on grounds of untimeliness.

C. Hearing and Report of the Hearing Examiner

The Executive Director appointed a hearing examiner to conduct a hearing on the issues stated above. The Hearing Examiner conducted a hearing on October 4, 2016. Respondent Lowery did not appear. Roney appeared and testified. Gina Walton, who is the current president of AFGE 1975, also appeared.[21] Walton presented arguments and introduced exhibits.

Following the hearing, the Hearing Examiner submitted his Report and Recommendations. The Report and Recommendations states that Roney was employed as a civil engineer technician with DOT until his termination.[22] On May 23, 2011, Roney was arrested for possession of marijuana and other charges. The U.S. Attorney's Office for the District of Columbia declined to proceed with prosecution of the charges.[23]

DOT Chief Engineer Ronaldo Nicholson considered the proposed removal of Roney and issued his decision in a January 10, 2012 Notice of Final Decision for Proposed Removal. Nicholson found that two causes for removal were supported by the evidence: (1) an on-duty act or omission that the employee knew or reasonably should have known is a violation of law and (2) an on-duty act or omission that interferes with the efficiency and integrity of government

[20] *Id.* at 10.
[21] Report & Recommendations 1.
[22] Report & Recommendations 2.
[23] Report & Recommendations 3.

operations. The specification for the first cause was Roney's arrest for possession of marijuana. The specification for the second cause was Roney's absence from his assigned work locations at the time of his arrest. Nicholson stated that he had reviewed all "Douglas factors" relevant to the penalty including mitigating and aggravating factors and stated that it was his decision to sustain the proposed removal.[24]

Roney's appeal to OEA was dismissed for lack of prosecution on June 12, 2014. OEA denied as untimely a motion to re-open the case that was filed on behalf of Roney on March 15, 2016.[25]

The Hearing Examiner stated as follows his findings and recommendations regarding the the case:

> It is most unfortunate that Petitioner Roney was not adequately represented by his Union representative in the course of the disciplinary action instituted against him by the Agency.
>
> One of the most vital functions of a Union is to protect the interests of its member when he or she is facing disciplinary action, especially the most significant penalty of termination. Clifford Lowery and AFGE 1975 abjectly failed to keep its commitment to its member, Michael P. Roney, with respect to his proposed termination by the Agency, the DC Department of Transportation.
>
> Parenthetically, it should be noted that the current president of [AFGE] Local 1975, Gina Walton, was not president of the Union at the time of the events involving Roney and she took no part in the failure of the Union to protect Roney's interests.
>
> However, this hearing officer cannot conclude that Complainant Roney has established, by a preponderance of the credible evidence, that his appeal to the DC Office of Employee Appeals would have succeeded but for Lowery's breach of the duty of fair representation in failing to file a petition for review.
>
> The Agency Chief Engineer, Ronaldo Nicholson, set forth a full evaluation of the record in reaching his decision to sustain the termination of Roney. He evaluated the events described in the credible police department report concerning Roney's arrest for drug possession. Despite the fact that the US Attorney exercised his discretion not to prosecute Roney for the marihuana and related offenses, the Agency Officer Nicholson carefully evaluated the

[24] Report & Recommendations 3-4; Compl. Ex. A.
[25] Report & Recommendations 4.

> police incident report. He also considered all 'Douglas factors' including mitigating factors and aggravating factors.
>
> Because of the limited scope of a petition for review to the OEA, and the fact that the Agency appears to have conducted a fair-minded and thorough analysis of the charges against Roney before confirming his termination, this hearing officer cannot conclude that if Lowery had filed a timely petition for review the outcome of the Agency disciplinary action would have been different.
>
> If Roney had been properly represented from the inception of this matter, and had availed himself of Agency resources, the outcome of the agency disciplinary action might have been different.
>
> Based on the foregoing, this hearing officer recommends that the complaint in this matter be dismissed, without costs to either party.[26]

No exceptions were filed.

II. Discussion

The complaint names Lowery as a respondent individually and in his official capacity as president of AFGE 1975.[27] His successor as president of AFGE 1975, Gina Walton, is substituted as a respondent in her official capacity.[28]

The Hearing Examiner's comment that the outcome might have been different if Roney had been properly represented from the inception of this matter is unnecessary speculation. The issue presented is limited to whether Roney proved that the outcome would have been different had Lowery filed a petition for review. Roney did not carry his burden of proof on that issue. He offered no evidence or testimony imparting the grounds that OEA would consider in a petition for review and did not indicate what argument could effectively be made on his behalf in such a petition. The next question would be whether Roney proved that he would have prevailed at a hearing had OEA ordered one. The Hearing examiner concluded from what was presented to

[26] Report & Recommendations 5-6.
[27] *Roney v. Lowery*, 63 D.C. Reg. 4603, Slip Op. No. 1565 at 5-6, PERB Case No. 15-U-03 (2016).
[28] *Cf.* Super. Ct. R. 25(d)(1) ("When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party."); Fed. R. Civ. P. 25(d) (to the same effect); *Johnson v. Kay*, No. 87 Civ. 6482, 1989 WL 94334 at *3 (U.S. Dist. Ct. S.D.N.Y. Aug. 9, 1989) (Underlying policies of rule on substitution of a public officer who was a party to an action in an official capacity applies as well to union officers participating in a lawsuit in their official capacities.)

him, particularly Nicholson's thorough Notice of Final Decision for Proposed Removal, that Roney did not. That conclusion is reasonable and supported by the record.

Accordingly, the Board, having reviewed the entire record, adopts the Hearing Examiner's recommendation that the complaint in this matter be dismissed, without costs to either party. Section 1-605.02(3) of the D.C. Official Code empowers the Board to "[d]ecide whether unfair labor practices have been committed and issue an appropriate remedial order." We previously found that an unfair labor practice was committed in this case and issued remedial orders. In light of the above, we find that no further remedial order is appropriate.

ORDER

IT IS HEREBY ORDERED THAT:

1. The hearing examiner's recommendation is adopted in its entirety.

2. The unfair labor practice complaint is dismissed.

3. Pursuant to Board Rule 559, this Decision and Order shall become final thirty (30) days after issuance unless a party files a motion for reconsideration or the Board reopens the case within fourteen (14) days after issuance of the Decision and Order.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairman Douglas Warshof and Members Barbara Somson and Mary Anne Gibbons.

July 27, 2017
Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Number 15-U-03 is being transmitted to the following parties on this the 31st day of July 2017.

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via File&ServeXpress

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