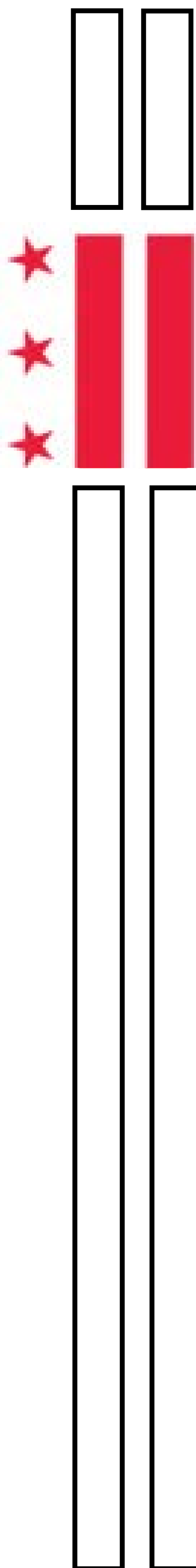

VOL. 66 – NO. 45 NOVEMBER 1, 2019

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council schedules a public oversight hearing on “Academic Achievement in the District of Columbia Public and Public Charter Schools”
- D.C. Council schedules a public oversight hearing on “Implementation of Law 22-307, Short-Term Rental Regulation Act of 2018”
- D.C. Council schedules a public oversight roundtable on “Resident Safety on Public Housing Properties”
- Department of Heath identifies public health continuing education topics required for renewing licenses, certifications, or registrations for health professionals
- The Mayor of the District of Columbia designates the auditorium at the Duke Ellington School of the Arts as the Dave Chappelle Auditorium (Mayor’s Order 2019-106)
- Mayor's Office of Legal Counsel publishes Freedom of Information Act Appeals
- Public Service Commission establishes rules governing disputes between public utilities and cable operators over the use of public utility facilities and rights-of-way

The Mayor of the District of Columbia designates special event areas for the 2019 World Series Champion Washington Nationals' Parade (Mayor’s Order 2019-112)

DISTRICT OF COLUMBIA REGISTER

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VICTOR L. REID, ESQ.
ADMINISTRATOR

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2019-156 & 2019-157 Peter Spaulding 014791

2019-158 DC Safe Healthy Playing Fields 014792
2019-159 Adam Marshall ....014793 - 014794
2019-160 Becky K. B ....014795 - 014796
2019-161 Arel Jennings ....014797 - 014798
2019-162 Michael Perloff 014799

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-130

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 23, 2019

To provide, on an emergency basis, that expenditures on school-administered theatrical and music performances, including stipends for non-District of Columbia Public Schools employees, shall be an allowable expenditure from a school's Student Activity Fund.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Student Activity Fund Theatrical and Music Performance Expenditures Emergency Act of 2019".

Sec. 2. Use of Student Activity Funds for theatrical and music performances.

(a) Expenditures on school-administered theatrical and music performances, including stipends for non-District of Columbia Public Schools employees, but excluding stipends for District of Columbia Public Schools ("DCPS") employees, shall be an allowable expenditure from a DCPS school's Student Activity Fund.

(b) For the purposes of this act, the term "theatrical and music performances" means the planning, rehearsal, or presentation of a musical, staged play, choral production, orchestral or band concert, variety show, improvised or sketch comedy performance, or other live performance.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

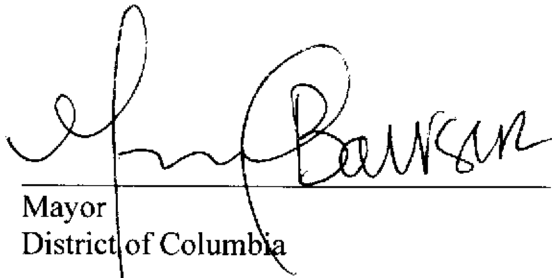
Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
October 23,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-131

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 23, 2019

To amend, on an emergency basis, An Act To create a Department of Corrections in the District of Columbia to limit the District's cooperation with federal immigration agencies, including by complying with detainer requests, absent a judicial warrant or order.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Sanctuary Values Emergency Amendment Act of 2019".

Sec. 2. Section 7 of An Act To create a Department of Corrections in the District of Columbia, effective December 11, 2012 (D.C. Law 19-194; D.C. Official Code § 24-211.07), is amended to read as follows:

"Sec. 7. Prohibition on cooperation with federal immigration agencies.

"(a) Absent a judicial warrant or order, issued by a federal judge appointed pursuant to Article III of the United States Constitution or a federal magistrate judge appointed pursuant to 28 U.S.C. § 631, that authorizes a federal immigration agency to take into custody the person who is the subject of such warrant or order, the District of Columbia shall not:

"(1) Hold an individual in the District's custody after that individual would have been otherwise released, except as provided in section 2a(c)(6);

"(2) Except as provided in Intergovernmental Agreement No. 16-00-0016, entered into between the Department of Corrections and the United States Marshals Service, provide to a federal immigration agency an individual's date and time of release, location, address, or criminal case information;

"(3) Provide to any federal immigration agency an office, booth, or any facility or equipment for a generalized search of or inquiry about an individual in the District's custody;

"(4) Permit any federal immigration agency to interview an individual in the District's custody without giving the individual an opportunity to have counsel present; or

"(5) Except as provided in Intergovernmental Agreement No. 16-00-0016, entered into between the Department of Corrections and the United States Marshals Service, grant any federal immigration agency access to a District detention facility, including St. Elizabeths Hospital or a facility under the control of the Department of Corrections or the Department of Youth Rehabilitation Services, for the purpose of releasing an individual into federal custody.

ENROLLED ORIGINAL

"(b) The District shall not inquire into the immigration status of an individual in its custody.

"(c) Nothing in this section shall be construed to establish a right to counsel that does not otherwise exist in law.

"(d) Nothing in this section shall be construed to create a private right of action.".

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
October 23,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-132

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 23, 2019

To amend, on an temporary basis, the Student Access to Treatment Act of 2007 to permit students to possess and self-administer sunscreen at the school in which the student is currently enrolled, at school-sponsored activities, and while on school-sponsored transportation without a medication action plan, and to permit school staff to administer sunscreen to a student at the school in which the student is currently enrolled, at a school-sponsored activity, and while on school-sponsored transportation without a medication action plan.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "School Sunscreen Safety Temporary Amendment Act of 2019".

Sec. 2. The Student Access to Treatment Act of 2007, effective February 2, 2008 (D.C. Law 17-107; D.C. Official Code § 38-651.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 38-651.01) is amended as follows:

(1) Paragraph (2) is amended by striking the period and inserting the phrase ". The term "medication" shall not include sunscreen." in its place.

(2) A new paragraph (5A) is added to read as follows:

"(5A) "Sunscreen" means a lotion, cream, spray, or gel regulated by the federal Food and Drug Administration for the purposes of absorbing, reflecting, or scattering ultraviolet radiation and preventing sunburn.".

(b) Section 3 (D.C. Official Code § 38-651.02) is amended as follows:

(1) The section heading is amended by striking the phrase "medication." and inserting the phrase "medication and sunscreen." in its place.

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

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

"(b)(1) A student may possess and self-administer sunscreen at the school in which the student is currently enrolled, at school-sponsored activities, and while on school-sponsored transportation to protect against ultraviolet radiation and sunburn, without the submission of a medication action plan; provided, that the responsible person has not provided written notice to the school principal or school nurse that the student may not possess or self-administer sunscreen.

ENROLLED ORIGINAL

"(2) School staff may administer sunscreen to a student at the school in which the student is currently enrolled, at a school-sponsored activity, and while on school-sponsored transportation to protect against ultraviolet radiation and sunburn, without the school possessing a medication action plan for that student; provided, that the student or responsible person has provided sunscreen for that purpose, and the responsible person has not provided written notice to the school principal or school nurse that the student may not use sunscreen.".

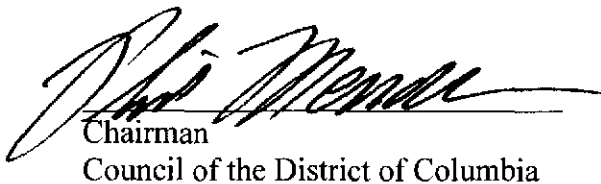
Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

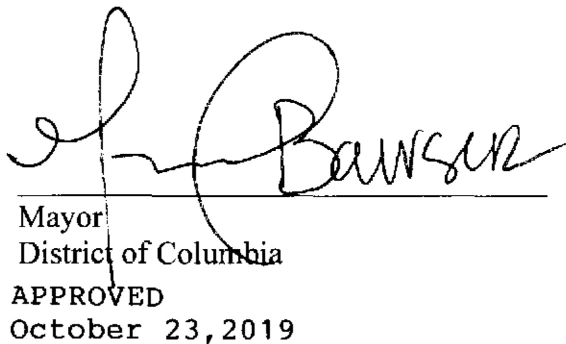
Sec. 5. Effective date.

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

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
October 23,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-133

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 23, 2019

To amend, on a temporary basis, the Legalization of Marijuana for Medical Treatment Initiative of 1999 to permit the administration of medical marijuana in a non-smokable form to a qualifying patient at the patient's school of enrollment; and to amend the Student Access to Treatment Act of 2007 to require District schools to allow a student who is a qualifying patient to administer medical marijuana at school in certain cases.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Student Medical Marijuana Patient Fairness Temporary Amendment Act of 2019."

Sec. 2. Section 4(b) of the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.03(b)), is amended as follows:

(a) Paragraph (1) is amended by striking the phrase "Medical marijuana shall" and inserting the phrase "Except as provided in paragraph (4) of this subsection, medical marijuana shall" in its place.

(b) A new paragraph (4) is added to read as follows:

"(4) Medical marijuana, in a non-smokable form, may be administered to a qualifying patient who is enrolled in school, at the school of enrollment, if the school has a policy in place for allowing administration of medication at school.".

Sec. 3. Section 4 of the Student Access to Treatment Act of 2007, effective February 2, 2008 (D.C. Law 17-107; D.C. Official Code § 38-651.03), is amended by adding a new subsection (a-1) to read as follows:

"(a-1)(1) If a student is a qualifying patient, as that term is defined in section 2(19) of the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.01(19)), and failure to administer medical marijuana during the school day would disrupt the student's ability to participate in school instruction, a medication action plan may include administration of medical marijuana, in a non-smokable form, to the student.

"(2) The medication action plan of a student who seeks to administer medical marijuana during the school day shall include a certification from an authorized practitioner, as that term is defined in section 2(1C) of the Legalization of Marijuana for Medical Treatment

ENROLLED ORIGINAL

Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.01(1C)), that failure to administer medical marijuana during the school day would disrupt the student's ability to participate in school instruction.

"(3) A school shall adopt policies that permit a student who is a qualifying patient under the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.02), to administer medical marijuana on campus during the school day as necessary based on the terms of the student's medical authorization.

"(4) A school may discontinue compliance with paragraphs (1) through (3) of this subsection if, after the effective date of the Student Medical Marijuana Patient Fairness Emergency Amendment Act of 2019, effective October 7, 2019 (D.C. Act 23-126; 66 DCR ___), the federal government issues a communication indicating that federal funding will be withheld from the District or a school within the District if the school continues to authorize administration of medical marijuana on its campus.".

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
October 23, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-134

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 23, 2019

To amend the District of Columbia Election Code of 1955 to require the Board of Elections to accept absentee ballots postmarked or otherwise proven to have been sent on or before the day of the election and received by the Board of Elections no later than the 7th day after the election, to move the primary election date in presidential election years to the first Tuesday in June, and to require the Board of Elections, at each early voting center, to allow persons to vote in person for not more than 12 days before election day; and to amend the Uniform Military and Overseas Voters Act of 2012 to require the Board of Elections to accept military overseas ballots postmarked or otherwise proven to have been sent on or before the day of the election and received by the Board of Elections no later than the 7th day after the election.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Primary Date Alteration Amendment Act of 2019".

Sec. 2. The District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.01 *et seq.*), is amended as follows:

(a) Section 5 (D.C. Official Code § 1-1001.05) is amended as follows:

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

(A) Paragraph (6) is amended by striking the phrase "election, provided, however," and inserting the phrase "election; provided, that" in its place.

(B) Paragraph (10A) is amended by striking the phrase "received by the Board by 8:00 p.m. on the day of the election" and inserting the phrase "postmarked or otherwise proven to have been sent on or before the day of the election, and received by the Board no later than the 7th day after the election" in its place.

(C) Paragraph (14) is amended by striking the phrase "to: Determine" and inserting the phrase "to determine" in its place.

(2) Subsection (a-1)(1) is amended by striking the phrase "48 hours" and inserting the phrase "48 hours'" in its place.

(3) Subsection (b)(1) is amended by striking the phrase "3rd Tuesday" and inserting the phrase "1st Tuesday" in its place.

ENROLLED ORIGINAL

(b) Section 9(b-1)(2) (D.C. Official Code § 1-1001.09(b-1)(2)) is amended by striking the number "10" and inserting the number "12" in its place.

(c) Section 10(a) (D.C. Official Code § 1-1001.10(a)) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase "3rd Tuesday" and inserting the phrase "1st Tuesday" in its place.

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

(A) Subparagraph (A) is amended by striking the phrase "3rd Tuesday in June of each even-numbered year" and inserting the phrase "1st Tuesday in June in a presidential election year and on the 3rd Tuesday in June of each even-numbered non-presidential election year" in its place.

(B) Subparagraph (B) is amended by striking the phrase "3rd Tuesday in June of each even-numbered year" and inserting the phrase "1st Tuesday in June in a presidential election year and on the 3rd Tuesday in June of each even-numbered non-presidential election year" in its place.

Sec. 3. Section 110 of the Uniform Military and Overseas Voters Act of 2012, effective June 5, 2012 (D.C. Law 19-137; D.C. Official Code § 1-1061.10), is amended by striking the phrase "received by the Board of Elections no later than 8:00 p.m. on the date of the election" and inserting the phrase "postmarked or otherwise proven to have been sent on or before the day of the election, and received by the Board of Elections no later than the 7th day after the election" in its place.

Sec. 4. Fiscal impact statement.

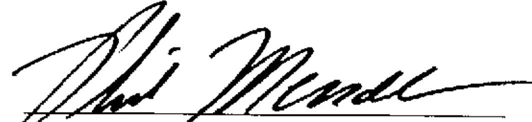
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

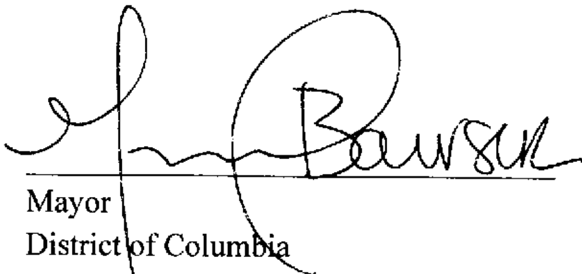
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(l) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
October 23,2019

3

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-135

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 23, 2019

To amend, on an emergency basis, the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010 to expand the Attorney General's grant-making authority for crime reduction and violence interruption.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Attorney General Grant-Making Authority Emergency Amendment Act of 2019".

Sec. 2. Section 108c(a) of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective May 10, 2019 (D.C. Law 22-313; D.C. Official Code § 1-301.88f(a)), is amended by striking the phrase "grants not to exceed the total amount of $360,000 for" and inserting the phrase "grants for" in its place.

Sec. 3. Applicability.
This act shall apply as of October 1, 2019.

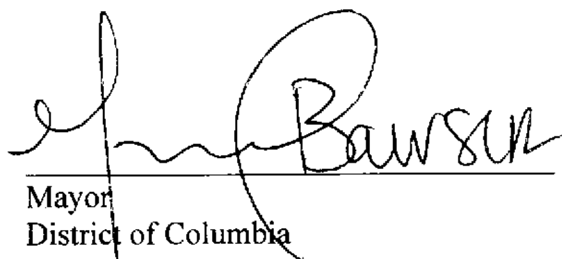
Sec. 4. Fiscal impact statement.
The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
October 23,1019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-136

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 23, 2019

To approve, on an emergency basis, Modification Nos. 3 and 4 to Human Care Agreement No. CW68847 with Constituent Services Worldwide Public Benefit Corporation to provide the Education and Occupational Training services to adult Temporary Assistance for Needy Families customers and to authorize payment for the goods and services received and to be received under that human care agreement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modifications to Human Care Agreement No. CW68847 with Constituent Services Worldwide Public Benefit Corporation Approval and Payment Authorization Emergency Act of 2019".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 3 and 4 to Human Care Agreement No. CW68847 with Constituent Services Worldwide Public Benefit Corporation to provide Education and Occupational Training services to adult Temporary Assistance for Needy Families customers and authorizes payment in the total not-to-exceed amount of $2,466,013 for the goods and services received and to be received under the human care agreement for the period from October 1, 2019 through September 30, 2020.

Sec. 3. Fiscal impact statement.

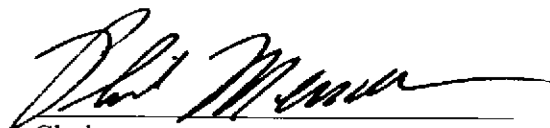
The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

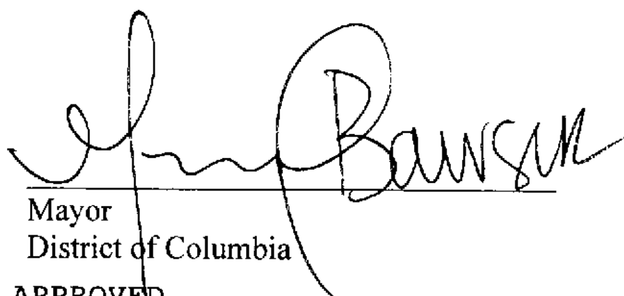
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
October 23,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-137

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 23, 2019

To amend, on an emergency basis, the Establishment of the Office of the Chief Medical Examiner Act of 2000 to require the Office of the Chief Medical Examiner to investigate all maternal mortalities occurring in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Investigating Maternal Mortalities Emergency Amendment Act of 2019".

Sec. 2. Section 2906 of the Establishment of the Office of the Chief Medical Examiner Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 5-1405), is amended as follows:

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

(1) Paragraph (11) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(2) Paragraph (12) is amended by striking the period and inserting the phrase "; and" in its place.

(3) A new paragraph (13) is added to read as follows:

"(13) All maternal mortalities.".

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

"(b-1) For the purposes of subsection (b) of this section, the term:

"(1) "Maternal mortalities" means pregnancy-associated deaths and pregnancy-related deaths, as those terms are defined in section 2(4) and (5) of the Maternal Mortality Review Committee Establishment Act of 2018, effective June 5, 2018 (D.C. Law 22-111; D.C. Official Code § 7-671.01(4) and (5)), and deaths resulting from severe maternal morbidity.

"(2) "Severe maternal morbidity" means one of the following outcomes of labor and delivery that results in short-term or long-term consequences to a woman's health:

"(A) Acute myocardial infarction;

"(B) Acute renal failure;

"(C) Adult respiratory distress syndrome;

"(D) Air and thrombotic embolism;

"(E) Amniotic fluid embolism;

"(F) Anesthesia complications;

ENROLLED ORIGINAL

"(G) Aneurysm;
"(H) Blood products transfusion;
"(I) Cardiac arrest/ventricular fibrillation;
"(J) Conversion of cardiac rhythm;
"(K) Disseminated intravascular coagulation;
"(L) Eclampsia;
"(M) Heart failure/arrest during surgery or procedure;
"(N) Hysterectomy;
"(O) Puerperal cerebrovascular disorders;
"(P) Pulmonary edema/acute heart failure;
"(Q) Sepsis;
"(R) Shock;
"(S) Sickle cell disease with crisis;
"(T) Temporary tracheostomy; or
"(U) Ventilation.".

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 23,2019

ENROLLED ORIGINAL

AN ACT

D.C ACT 23-138

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 23, 2019

To amend, on an emergency basis, due to congressional review, the Data-Sharing and Information Coordination Amendment Act of 2010 to allow the disclosure of health and human services information to aid in the development of the report on the root causes of youth crime and the prevalence of adverse childhood experiences among justice-involved youth; to amend the District of Columbia Mental Health Information Act of 1978 to allow the disclosure of mental health information when necessary to conduct an analysis of the root causes of youth crime and the prevalence of adverse childhood experiences among justice-involved youth; to amend the Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001 to extend the deadline for submission of the analysis of the root causes of youth crime and prevalence of adverse childhood experiences report to March 31, 2020, and to require that certain District agencies provide the Criminal Justice Coordinating Council with information necessary to complete the report; and to amend An Act To establish a Board of Indeterminate Sentence and Parole for the District of Columbia and to determine its functions, and for other purposes to clarify that amendments to section 3c of the act apply to all proceedings pending in any District of Columbia court that were initiated under that section, regardless of when those proceedings were initiated.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Criminal Justice Coordinating Council Information Sharing Congressional Review Emergency Amendment Act of 2019".

Sec. 2. Section 102(a) of the Data-Sharing and Information Coordination Amendment Act of 2010, effective December 4, 2010 (D.C. Law 18-273; D.C. Official Code § 7-242(a)), is amended as follows:

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

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

(c) A new paragraph (5) is added to read as follows:

ENROLLED ORIGINAL

"(5) To aid in the development of the report required by section 1505(b-3) of the Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 22-4234(b-3)).".

Sec. 3. Section 302 of the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1203.02), is amended as follows:

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

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

(c) A new paragraph (4) is added to read as follows:

"(4) To meet the requirements of section 1505(b-3) of the Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 22-4234(b-3)).".

Sec. 4. Section 1505 of the Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 22-4234), is amended as follows:

(a) Subsection (b-3) is amended by striking the phrase "On October 1, 2018" and inserting the phrase "On March 31, 2020" in its place.

(b) A new subsection (b-4) is added to read as follows:

"(b-4) Upon request by the CJCC, and to aid in the development of the report required by subsection (b-3) of this section, the following agencies shall provide, or cause to be provided, the information listed below to the CJCC, including any associated personally identifying information:

"(1) For the Office of the State Superintendent of Education, the following information for each student enrolled in a District of Columbia Public School or a District of Columbia public charter school for the preceding 2 completed academic years:

"(A) Demographic information, including:

"(i) Name, address, and date of birth;

"(ii) Sex;

"(iii) Gender;

"(iv) Race; and

"(v) Ethnicity;

"(B) Enrollment data, including:

"(i) The school or campus attended by each student;

"(ii) The location of the school or campus;

"(iii) Whether the school or campus is an elementary school, middle school, or high school;

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"(iv) Whether the school or campus is a public school, public charter school, or private school;

"(v) The student's grade level;

"(vi) Whether the student receives special education services;

"(vii) Whether the student is identified as homeless; and

"(viii) Whether the student is one year older, or more, than the expected age for the grade in which the student is enrolled;

"(C) Attendance data;

"(D) Performance data, including:

"(i) Student performance on any District-wide assessments; and

"(ii) Grade advancement for students enrolled; and

"(E) Discipline data, including:

"(i) Total number of in-school suspensions, out-of-school suspensions, involuntary dismissals, emergency removals, disciplinary unenrollment, voluntary withdrawals or transfers, referrals to law enforcement, school-based arrests, or, for students with disabilities, changes in placement, experienced by the student during each school year;

"(ii) Total number of days excluded from school;

"(iii) Whether the student was referred to an alternative education setting for the duration of a suspension, and whether the student attended the alternative education setting;

"(iv) Whether the student was subject to a disciplinary unenrollment during the school year;

"(v) Whether the student voluntarily withdrew or voluntarily transferred from the school during the school year;

"(vi) Whether the student was subject to referral to law enforcement;

"(vii) Whether the student was subject to school-related arrest; and

"(viii) A description of the misconduct that led to or reasoning behind each suspension, involuntary dismissal, emergency removal, disciplinary unenrollment, voluntary withdrawal or transfer, referral to law enforcement, school-based arrest and, for students with disabilities, change in placement;

"(2) For the Department of Health Care Finance, the following information for individuals between the ages of 10 and 18:

"(A) Demographic information, including:

"(i) Name, address, and date of birth;

"(ii) Sex;

"(iii) Gender;

"(iv) Race; and

"(v) Ethnicity;

"(B) Enrollment data, including;

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"(i) Eligibility start date;
"(ii) Eligibility end date; and
"(iii) Eligibility basis;
"(C) Claims data with mental, behavioral, and neurodevelopmental disorder diagnoses or substance abuse diagnoses; and
"(D) Claims data with mental health or substance abuse procedures;
"(3) For the Department of Human Services, enrollment data for households participating in the District's Temporary Assistance for Needy Families ("TANF") program, including:
"(A) The name, address, and date of birth for each household member for individuals between the ages of 10 and 18; and
"(B) Household income information; and
"(4) For the Child and Family Services Agency, the following information for individuals between the ages of 10 and 18:
"(A) Demographic information, including:
"(i) Name, address, and date of birth;
"(ii) Sex;
"(iii) Gender;
"(iv) Race; and
"(v) Ethnicity;
"(B) Investigation data related to alleged child abuse or neglect, including:
"(i) Allegations made against the individual's parents, guardians, or other custodians;
"(ii) Whether the allegations were substantiated or inconclusive;
"(iii) The date the investigation was completed or suspended;
"(iv) Whether the individual was removed from the home or another location;
"(v) The reason for the removal; and
"(vi) The date of the removal; and
"(C) Family assessment data related to alleged child abuse or neglect, including:
"(i) Allegations made against the individual's parents, guardians, or other custodians;
"(ii) The date the family assessment was initiated;
"(iii) The date the family assessment was completed;
"(iv) Whether the family assessment resulted in the determination that the family needs services or resulted in a referral for investigation; and
"(v) The reason the family assessment was closed.".

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Sec. 5. Section 3c of An Act To establish a Board of Indeterminate Sentence and Parole for the District of Columbia and to determine its functions, and for other purposes, effective April 4, 2017 (D.C. Law 21-238; D.C. Official Code § 24-403.03), is amended by adding a new subsection (f) to read as follows:

"(f) Any amendments to this section shall apply to all proceedings initiated under this section, including any appeals thereof, in any District of Columbia court, including proceedings that are pending as of the effective date of the Criminal Justice Coordinating Council Information Sharing Emergency Amendment Act of 2019, effective July 24, 2019 (D.C. Act 23-106; 66 DCR 9754), regardless of when those proceedings were initiated.".

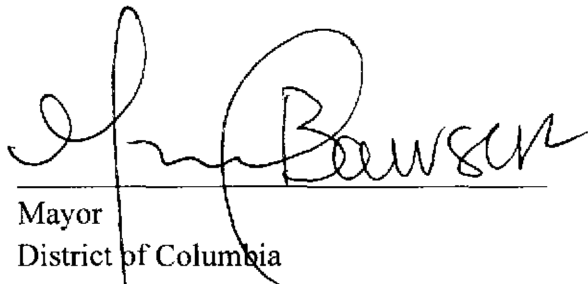
Sec. 6. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 7. Effective date.

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

Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
October 23,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-139

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 23, 2019

To amend, on an emergency basis, due to congressional review, Chapter 46 of Title 47 of the District of Columbia Official Code to provide an abatement of real property taxes for property located at 1201-1215 Good Hope Road, S.E., and known for tax and assessment purposes as Lots 1017, 847, 867, 866, and 864 in Square 5769.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "MLK Gateway Real Property Tax Abatement Congressional Review Emergency Amendment Act of 2019".

Sec. 2. Chapter 46 of Title 47 of the District of Columbia Official Code is amended as follows:

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

"§ 47-4671. MLK Gateway real property tax abatement.".

(b) A new section 47-4671 is added to read as follows:

"§ 47-4671. MLK Gateway real property tax abatement.

"(a) For the purposes of this section, the term:

"(1) "CBE" means a certified business enterprise or joint venture certified pursuant to the CBE Act.

"(2) "CBE Act" means the Small and Certified Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*).

"(3) "Developer" means MLK Gateway Partners LLC, a District of Columbia limited liability company, with a business address of 3401 8th Street, N.E., comprised of the Menkiti Group, with a business address of 3401 8th Street N.E., or its successors, or one of its affiliates or assignees and Enlightened Inc., with a business address of 1101 Connecticut Avenue, N.W., Washington D.C. 20036, or its successors, or one of its affiliates or assignees, as approved by the Mayor.

"(4) "First Source Agreement" means an agreement with the District governing certain obligations of the Developer pursuant to section 4 of the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-

ENROLLED ORIGINAL

219.03), and Mayor's Order 83-265, dated November 9, 1983, regarding job creation and employment generated as a result of the construction on the Property.

"(5) "Project" means a mixed-use commercial project, including renovating the historic storefronts, new office and retail space, and any ancillary uses allowed under applicable law.

"(6) "Property" means the real property described as 1201-1215 Good Hope Road, S.E., known for tax and assessment purposes as Lots 1017, 847, 867, 866, and 864 in Square 5769, and any improvements on that real property.

"(b)(1) Beginning with the tax year immediately following the tax year during which a certificate of occupancy (whether temporary or final) is issued authorizing Enlightened Inc., or another locally owned and operated business with employees in the District of Columbia approved by the Mayor, any use of the Property, the tax imposed by Chapter 8 of this title on the Property, subject to funding, shall be abated for 15 real property tax years. The total amount of the abatement shall not exceed $3 million.

"(2) The Project shall be exempt from recordation taxation imposed pursuant to Chapter 11 of Title 42.

"(3) The Project shall be exempt from transfer taxes imposed pursuant to Chapter 9 of this title.

"(4) Notwithstanding paragraph (1) of this subsection, in no case shall the abatement provided in paragraph (1) of this subsection begin before October 1, 2020.

"(c) For the Property to receive the abatement described in this section, the:

"(1) Developer shall maintain a lease agreement with Enlightened Inc., or another locally owned and operated business with employees in the District of Columbia approved by the Mayor, for approximately 20,000 square feet of office space within the Project.

"(2) Project shall include 35% CBE participation;

"(3) Project shall comply with a First Source Hiring Agreement; and

"(4) Developer shall conduct 2 employment fairs in Ward 8 to encourage local participation in the redevelopment of the Property and make local residents aware of job opportunities in the redevelopment of the Property and in the businesses that will occupy the Property after completion of the redevelopment.

"(d)(1) The Mayor shall certify to the Office of Tax and Revenue the Property's eligibility for the abatement provided pursuant to this section. The Mayor's certification shall include:

"(A) A description of the Property by street address, square, suffix, and lot, and the date the abatement begins and ends;

"(B) The date a certificate of occupancy for Enlightened Inc., or another locally owned and operated business with employees in the District of Columbia as approved by the Mayor, authorizing any use of the Property was issued;

"(C) A statement that the conditions specified in subsection (c) of this section have been satisfied; and

ENROLLED ORIGINAL

"(D) Any other information that the Mayor considers necessary or appropriate.

"(2) If at any time the Mayor determines that the Property has become ineligible for the abatement provided pursuant to this section, the Mayor shall notify the Office of Tax and Revenue and shall specify the date that the Property became ineligible. The entire Property shall be ineligible for the abatement on the first day of the tax year following the date when ineligibility occurred.

"(e) The exemption provided by this section shall be in addition to, and not in lieu of, any other tax relief or assistance from any other source applicable to the MLK Gateway Disposition, as approved by the MLK Gateway Disposition Approval Resolution of 2017, effective December 5, 2017 (Res. 22-319; 65 DCR 33).".

Sec. 3. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

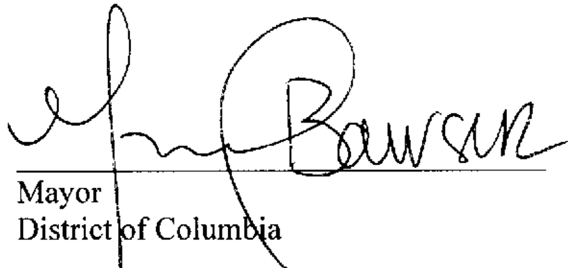
Sec. 5. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
October 23,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-140

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 23, 2019

To amend, on an emergency basis, due to congressional review, the Food Production and Urban Gardens Program Act of 1986 to clarify that, under the Urban Farming Land Lease Program, the District may enter into a lease agreement with a qualified applicant to create and maintain an urban farm on vacant land and to authorize the Department of Energy and Environment to waive soil testing requirements for a lessee who agrees not to plant in or use the site soil.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Urban Farming Land Lease Congressional Review Emergency Amendment Act of 2019".

Sec. 2. Section 3a of the Food Production and Urban Gardens Program Act of 1986, effective April 30, 2015 (D.C. Law 20-248; D.C. Official Code § 48-402.01), is amended as follows:

(a) Subsection (a) is amended by striking the phrase "Department to" and inserting the phrase "District to" in its place.

(b) Subsection (b) is amended by striking the phrase "the Office" and inserting the phrase "the Department of General Services and the Office" in its place.

(c) Subsection (d)(1) is amended by striking the word "Department" and inserting the word "District" in its place.

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

"(d-1) The Department may waive the requirements in subsection (d)(2) and (3) of this section when the lessee does not grow produce in the site soil of the leased property but instead uses, for example, raised beds, greenhouses, or hydroponic towers; provided, that the lease agreement includes a provision stating that the lessee will not plant in or use the site soil.".

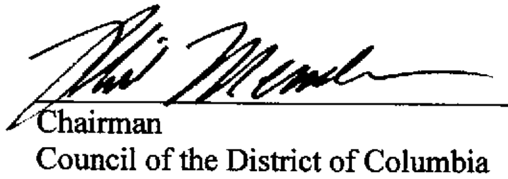
Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

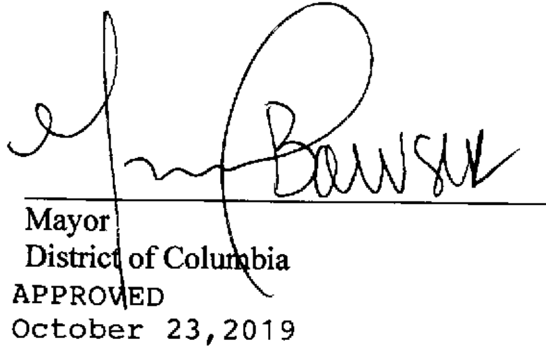
ENROLLED ORIGINAL

Sec. 4. Effective date.

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
October 23,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-141

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 23, 2019

To amend, on an emergency basis, due to congressional review, Chapter 48 of Title 16 of the District of Columbia Official Code to expand the standby guardianship law to enable a parent, legal guardian, or legal custodian who is, or may be subject to an adverse immigration action, to make short-term plans for a child without terminating or limiting that person's parental or custodial rights.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Standby Guardian Congressional Review Emergency Amendment Act of 2019".

Sec. 2. Chapter 48 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-4801 is amended as follows:

(1) Paragraph (1) is amended by striking the phrase "or who is periodically incapable of caring for the needs of a child due to the parent's incapacity or debilitation resulting from illness," and inserting the phrase "who is periodically incapable of caring for the needs of a child due to the parent's incapacity or debilitation resulting from illness, or who may be subject to an adverse immigration action," in its place.

(2) Paragraph (2) is amended by striking "ill parents" and inserting "parents who may be ill or subject to an adverse immigration action" in its place.

(b) Section 16-4802 is amended as follows:

(1) Paragraph (1) is redesignated as Paragraph (1A).

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

"(1) "Adverse immigration action" includes any of the following:

"(A) Arrest or apprehension by any local, state, or federal law enforcement officer for an alleged violation of federal immigration law;

"(B) Arrest, detention, or custody by the Department of Homeland Security or a federal, state, or local agency authorized or acting on behalf of the Department of Homeland Security;

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ENROLLED ORIGINAL

"(C) Departure from the United States under an order of removal, deportation, exclusion, voluntary departure, or expedited removal, or a stipulation of voluntary departure;

"(D) The denial, revocation, or delay of the issuance of a visa or transportation letter by the Department of State;

"(E) The denial, revocation, or delay of the issuance of a parole document or reentry permit by the Department of Homeland Security; or

"(F) The denial of admission or entry into the United States by the Department of Homeland Security or other local or state officer acting on behalf of the Department of Homeland Security.".

(2) Paragraph (8) is amended by striking the phrase ", who has been diagnosed, in writing, by a licensed clinician to suffer from a chronic condition caused by injury, disease, or illness from which, to a reasonable degree of probability, the designator may not recover." and inserting a period in its place.

(3) Paragraph (13) is amended to read as follows:

"(13) "Triggering event" means any of the following events:

"(A) The designator is subject to an adverse immigration action; or

"(B) The designator has been diagnosed, in writing, by a licensed clinician to suffer from a chronic condition caused by injury, disease, or illness from which, to a reasonable degree of probability, the designator may not recover and the designator:

"(1) Becomes debilitated, with the designator's written acknowledgement of debilitation and consent to commencement of the standby guardianship;

"(2) Becomes incapacitated as determined by an attending clinician; or

"(3) Dies.".

(c) Section 16-4804(a) is amended by striking the phrase "the designator's health" and inserting the phrase "the designator's health or immigration status" in its place.

(d) Section 16-4805(b) is amended as follows:

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

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

(B) Subparagraph (C) is amended by striking the semicolon and inserting the phrase "; or" in its place; and

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

"(D) An adverse immigration action against the designator.".

(2) Paragraph (4) is amended by striking the phrase "that the designator suffers" and inserting the phrase "that the designator experienced an adverse immigration action or suffers".

(3) A new paragraph (7A) is inserted to read as follows:

ENROLLED ORIGINAL

"(7A) If an adverse immigration action is the triggering event, documentation demonstrating that an adverse immigration action occurred;".

(e) Section 16-4806 is amended as follows:

(1) Subsection (b) is amended by striking the phrase "or dies." and inserting the phrase "dies, or is subject to an adverse immigration action." in its place.

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

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

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

(C) A new paragraph (4) is added to read as follows:

"(4) The documentation demonstrating that an adverse immigration action occurred against the designator.".

(3) Subsection (l) is amended by striking the phrase "medically unable to appear" and inserting the phrase "unable to appear for medical reasons or due to an adverse immigration action" in its place.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 23, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-142

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 29, 2019

To amend, on an emergency basis, section 47-362 of the District of Columbia Official Code to state that intra-District transfers shall not be used to establish new programs or to change allocations specifically denied, limited, or increased by the Council in the budget act, or the accompanying budget report or mark-up sheets.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Intra-District Transfer Limitation Emergency Amendment Act of 2019".

Sec. 2. Section 47-362(b) of the District of Columbia Official Code is amended by striking the phrase "Reprogrammings shall" and inserting the phrase "Reprogrammings or intra-District transfers shall" in its place.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

UNSIGNED

Mayor
District of Columbia

October 23,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-143

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 29, 2019

To approve, on an emergency basis, Modification Nos. 5, 6, 7, 8, and 9 to Contract No. CW43271 with Synergetic Information Systems, Inc. to provide mission-oriented business integration services, and to authorize payment for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modification Nos. 5, 6, 7, 8, and 9 to Contract No. CW43271 Approval and Payment Authorization Emergency Act of 2019".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 5, 6, 7, 8, and 9 to Contract No. CW43271 with Synergetic Information Systems, Inc. to provide mission-oriented business integration services and authorizes payment in the not-to-exceed amount of $10 million for the goods and services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

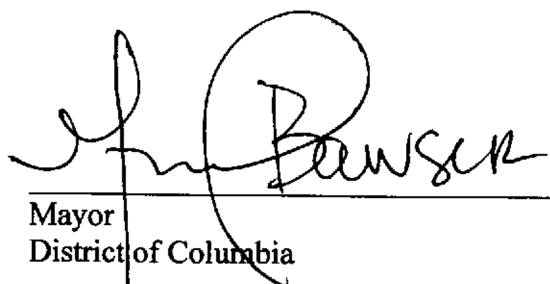
Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
October 29,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-144

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 29, 2019

To require, on an emergency basis, due to congressional review, the Department of Insurance, Securities, and Banking to provide for the licensing of certain entities providing appraisal management services in the District of Columbia and to require an annual registration fee to be paid by those entities.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Appraisal Management Company Regulation Congressional Review Emergency Act of 2019".

TITLE I. APPRAISAL MANAGEMENT COMPANY REGULATIONS

Sec. 101. Definitions.

For purposes of this act, the term:

(1) "Affiliate" means any company that controls, is controlled by, or is under common control of another company.

(2) "AMC National Registry" means the registry of state-registered appraisal management companies and federally regulated appraisal management companies maintained by the Appraisal Subcommittee.

(3) "Appraisal Foundation" means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(4) "Appraisal management company" means a person, not including a department or division of an entity that provides appraisal management services only to that entity, that:

(A)(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates; or

(ii) Provides appraisal management services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(B) At any time in a 12-calendar month period oversees an appraiser panel of more than 15 state-certified or state-licensed appraisers in a state or 25 or more state-certified or state-licensed appraisers in 2 or more states, as described in section 103.

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ENROLLED ORIGINAL

(5) "Appraisal management services" means one or more of the following:

(A) Recruiting, selecting, and retaining appraisers;

(B) Contracting with state-certified or state-licensed appraisers to perform appraisal assignments;

(C) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(D) Reviewing and verifying the work of appraisers.

(6) "Appraisal panel" means a network, list, or roster of licensed or certified appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company. Appraisers on an appraiser panel include both appraisers accepted by the appraisal management company for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions, and appraisers engaged by the appraisal management company to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions. An appraiser is an independent contractor if the appraiser is treated as an independent contractor by the appraisal management company for purposes of federal income taxation.

(7) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment and is related to the appraiser's data collection, analysis, opinions, conclusions, estimate of value, or compliance with the uniform standards of professional appraisal practice. This term does not include:

(A) A general examination for grammatical, typographical, or other similar errors;

(B) A general examination for completeness, including regulatory or client requirements as specified in the agreement process that does not communicate an opinion of value.

(8) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(9) "Consumer credit" means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(10) "Controlling person" means:

(A) An officer, director, or owner of greater than a 10% interest of a corporation, partnership, or other business entity seeking to act as an appraisal management company;

ENROLLED ORIGINAL

(B) An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter a contractual relationship with other persons for the performance of services requiring registration as an appraisal management company and has the authority to enter agreements with appraisers for the performance of appraisals; or

(C) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management of policies of an appraisal management company.

(11) "Covered transaction" means any consumer credit transaction secured by the consumer's principal dwelling.

(12) "Creditor" means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than 4 installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension for transactions secured by a dwelling.

(13) "Department" means the Department of Insurance, Securities, and Banking.

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

(15) "Dwelling" means a residential structure that contains one to 4 units, regardless of whether that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(16) "Federal financial institutions regulatory agency" includes the Consumer Financial Protection Bureau, the Federal Housing Finance Agency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration.

(17) "Federally regulated appraisal management company" means an appraisal management company that is owned and controlled by an insured depository institution, as defined in section 3(c)(2) of the Federal Deposit Insurance Act, approved September 21, 1950 (64 Stat. 873; 12 U.S.C. § 1813(c)(2)), and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration.

(18) "Federally regulated transaction regulations" means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, approved August 9, 1989 (103 Stat. 183; 12 U.S.C. §§ 3341-3343).

(19) "Federally related transaction" means any real estate-related financial transaction that involves an insured depository institution regulated by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal

ENROLLED ORIGINAL

Deposit Insurance Corporation, or the National Credit Union Administration and that requires the services of an appraiser under the interagency appraisal rules.

(20) "Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(21) "Principal dwelling" means the primary residence of a consumer. For purposes of this act, a consumer may only have one principal dwelling. A vacation or other second home shall not be considered a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's primary residence within a year or upon completion of the construction, the new residence is considered the principal dwelling for purposes of this act.

(22) "Real estate-related financial transaction" means any transaction involving the sale, lease, purchase, investment in, or exchange of real property, including interests in property or the financing thereof; the refinancing of real property or interests in real property; or the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(23) "Secondary mortgage market participant" means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. The term includes an individual investor in a mortgage-backed security only if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(24) "State" includes the District of Columbia.

(25) "Uniform Standards of Professional Appraisal Practice" or "USPAP" means the appraisal standards as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Sec. 102. Administration.

(a) The Department shall have the authority to adopt rules that are reasonably necessary to establish an appraisal management company licensing program and implement, administer, and enforce the provisions set forth under this act.

(b) The Department shall charge appraisal management companies operating in the District reasonable fees to administer this act. The Department's fees shall be established by rule.

(c) The Department shall perform the following functions:

(1) Review and approve or deny an appraisal management company's application for initial registration in the District;

(2) Periodically review and renew or review and deny an appraisal management company's registration;

(3) Examine the books and records of an appraisal management company operating in the District and require the appraisal management company to submit reports, information, and documents;

ENROLLED ORIGINAL

(4) Verify that the appraisers on the appraiser panel of an appraisal management company operating in the District hold valid District certifications or licenses, as applicable;

(5) Conduct investigations of appraisal management companies operating in the District to assess potential violations of applicable appraisal-related laws, regulations, or orders; and

(6) Report an appraisal management company's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about the operations of an appraisal management company operating in the District.

(d) The Department shall impose requirements on appraisal management companies operating in the District that are not owned and controlled by an insured depository institution and not regulated by a federal financial institutions regulatory agency to:

(1) Register with and be subject to supervision by the Department;

(2) Engage only state-certified or state-licensed appraisers for federally related transactions in conformity with any federally regulated transaction regulations;

(3) Establish and comply with processes and controls reasonably designed to ensure that the appraisal management company, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct appraisers to perform assignments in accordance with Uniform Standards of Professional Appraisal Practices; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the appraisal management company conducts its appraisal management services in accordance with the requirements of section 129E(a)-(i) of the Truth in Lending Act, approved July 21, 2010 (124 Stat. 2187; 15 U.S.C. § 1639e(a)-(i)), and regulations thereunder.

(e) The Department shall maintain a list of the appraisal management companies that are registered in the District.

(f) The Department shall issue a unique registration number to each appraisal management company that is registered in the District pursuant to regulations or guidance promulgated by the Department.

(g) The Department shall require an appraisal management company registered in the District to place its registration number on engagement documents utilized by the appraisal management company to procure appraisal services in the District.

Sec. 103. Appraisal panel size and calculation.

(a) For purposes of determining whether a person is an appraisal management company within the meaning of section 101(4), an appraiser is deemed part of an appraiser panel as of the earliest date on which the person overseeing the appraisal panel:

ENROLLED ORIGINAL

(1) Accepts the appraiser for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor for covered transactions or secondary mortgage market participant in connection with covered transactions.

(b) An appraiser who is deemed part of an appraiser panel pursuant to subsection (a) of this section is deemed to remain on the panel until the date on which the person overseeing the appraisal panel:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an appraiser panel pursuant to subsection (b)(2) of this section, but the person overseeing the appraisal panel subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the 12 months after the appraiser's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the appraiser panel without interruption.

Sec. 104. Registration.

(a) It shall be unlawful for a person to directly or indirectly engage or to attempt to engage in business as an appraisal management company in the District, or to advertise or hold itself out as engaging in or conducting business as an appraisal management company in the District without first obtaining a registration issued by the Department.

(b) An applicant for registration as an appraisal management company in the District shall submit to the Department an application on forms prescribed by the Department and pay a fee established by the Department. The forms shall require information necessary to determine eligibility for registration.

(c) Upon registration of an appraisal management company in the District, the Department may require a surety bond of not more than $25,000.

Sec. 105. Reporting requirements.

(a) The Department shall collect from each appraisal management company registered or seeking to be registered in the District the information and fees that the Department requires to be submitted to it pursuant to regulations or guidance promulgated by the Department.

(b) A federally regulated appraisal management company operating in the District must report to the Department the information required to be submitted by the District to the Appraisal Subcommittee, pursuant to the Appraisal Subcommittee's policies regarding the determination of

ENROLLED ORIGINAL

the appraisal management company National Registry fee. These reporting requirements will be set forth by the Department by rule, and will include:

(1) A report to the Department on a form prescribed by the Department of intent to operate in the District of Columbia;

(2) Information related to whether the appraisal management company is owned in whole or in part, directly or indirectly, by any person who has had an appraiser license or certificate refused, denied, canceled, surrendered in lieu of revocation, or revoked in any state for a substantive cause, as determined by the Appraisal Subcommittee; and

(3) If such a person has had such action taken on his or her appraisal license, information related to whether the license was revoked for a substantive cause and whether it has been reinstated by the state or states in which the appraiser was licensed or certified.

Sec. 106. Appraisal management company requirements.

(a) An appraisal management company operating in the District shall meet the following requirements at all times:

(1) At the time of applying for registration or renewing registration in the District, the appraisal management company shall designate one of its controlling persons to serve as the main contact for all communication between the Department and the company. The designated controlling person shall:

(A) Remain in good standing in the District and in any other state that has issued the controlling person an appraiser license or certification; however, nothing in this act shall require that a designated controlling person hold or continue to hold an appraiser license or certification in any jurisdiction;

(B) Never have had an appraiser license or certification in the District or any other state refused, denied, canceled, revoked or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted;

(C) Be of good moral character;

(2) Before or at the time of placing an assignment to appraise real property in the District with an appraiser on the appraiser panel of the appraisal management company, the appraisal management company shall verify that the appraiser receiving the assignment holds an appraiser license or certification in good standing in the District;

(3) Any employee of or independent contractor to the appraisal management company who performs an appraisal review for a property located in the District must be a certified or licensed appraiser in good standing in the District; and

(4) An appraisal management company registered in the District shall place its registration number on engagement documents utilized by the appraisal management company to procure appraisal services in the District of Columbia.

(b) An appraisal management company that has a reasonable basis to believe an appraiser has materially failed to comply with applicable laws or rules or has materially

ENROLLED ORIGINAL

violated the USPAP shall refer the matter to the Department in conformance with applicable federal laws and regulations.

Sec. 107. Verification of licensure or certification.

(a) An appraisal management company registered in the District may not enter into any contract or agreement with an appraiser for the performance of appraisals in the District unless the company verifies that the appraiser is licensed or certified in good standing in the District.

(b) An appraisal management company seeking to be registered to renew a registration in the District shall certify to the Department on a form prescribed by the Department that the company has a system and process in place to verify that an individual being added to the appraiser panel of the company for appraisal services holds an appraiser license or certification in good standing in the District.

Sec. 108. Retention of records.

(a) Each appraisal management company seeking to be registered or to renew an existing registration in the District shall certify to the Department on a form prescribed by the Department that the company maintains a detailed record of each service request that the company receives for appraisals of real property located in the District.

(b) An appraisal management company registered in the District shall retain all records required to be maintained under this act for at least 5 years after the file is submitted to the appraisal management company or for at least 2 years after final disposition of any related judicial proceeding of which the appraisal management company is provided notice, whichever period expires later.

(c) All records required to be maintained by the registered appraisal management company shall be made available for inspection by the Department on reasonable notice to the appraisal management company.

Sec. 109. Payment to appraisers.

(a) An appraisal management company shall, except in bona fide cases of breach of contract or substandard performance of services, make payment to an independent appraiser for the completion of an appraisal or valuation assignment no later than 45 days after the date on which the appraiser transmits or otherwise provides the completed appraisal or valuation assignment to the company or its assignee unless a mutually agreed-upon alternate arrangement previously has been established.

(b) An appraisal management company seeking to be registered or to renew an existing registration in the District shall certify that the company will require appraisals to be conducted independently as required by the appraisal independence standards under section 129E of the Truth in Lending Act, approved July 21, 2010 (124 Stat. 2187; 15 U.S.C. § 1639e), including the requirement that a customary and reasonable fee be paid to an independent appraiser who

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completes an appraisal in connection with a consumer credit transaction secured by a principal dwelling.

Sec. 110. Prohibited conduct.

A violation of this section may constitute grounds for discipline against an appraisal management company registered in the District. However, nothing in this act shall prevent an appraisal management company from requesting that an appraiser provide additional information about the basis for a valuation, correct objective factual errors in an appraisal report, or consider additional appropriate property information. No employee, director, officer, agent, independent contractor, or other third party acting on behalf of an appraisal management company may do any of the following:

(a) Procure or attempt to procure a registration or renewal by knowingly making a false statement, submitting false information, or refusing to provide complete information in response to a question in an application for registration or renewal;

(b) Willfully violate this act or rules of the Department pertaining to this act;

(c) Improperly influence or attempt to improperly influence the development, reporting, result, or review of an appraisal through intimidation, coercion, extortion, bribery, or any other manner, including:

(1) Withholding payment for appraisal services;

(2) Threatening to exclude an appraiser from future work or threatening to demote or terminate the appraiser in order to improperly obtain a desired result;

(3) Conditioning payment of an appraisal fee upon the opinion, conclusion, or valuation to be reached by the appraiser; or

(4) Requesting that an appraiser report a predetermined opinion, conclusion, or valuation, or the desired valuation of any person or entity;

(d) Alter, amend, or change an appraisal report submitted by an appraiser without the appraiser's knowledge and written consent;

(e) Except within the first 90 days after an independent appraiser is added to an appraiser panel, remove an independent appraiser from an appraiser panel without prior written notice to the appraiser, with the prior written notice including evidence of the following, if applicable:

(1) The appraiser's illegal conduct;

(2) A violation of USPAP, this act, or the rules adopted by the Department pursuant to this act;

(3) Improper or unprofessional conduct; or

(4) Substandard performance or other substantive deficiencies;

(f) Require an appraiser to sign any indemnification agreement that would require the appraiser to defend and hold harmless the appraisal management company or any of its agents or employees for any liability, damage, losses, or claims arising out of the services performed

ENROLLED ORIGINAL

by the appraisal management company or its agents, employees, or independent contractors and not the services performed by the appraiser;

(g) Prohibit lawful communications between the appraiser and any other person whom the appraiser, in the appraiser's professional judgment, believes possesses information that would be relevant;

(h) Fail to timely respond to any subpoena or any other request for information;

(i) Fail to timely obey an administrative order of the Department; or

(j) Fail to fully cooperate in any investigation.

Sec. 111. Disciplinary proceedings.

The Department may deny, suspend, or revoke the registration of an appraisal management company; impose a monetary penalty of an amount not to exceed $5,000 per violation; issue a letter of reprimand; refuse to issue or renew the registration of an appraisal management company; or take other disciplinary action against an appraisal management company when an appraisal management company engages in conduct prohibited under section 110.

Sec. 112. Criminal history checks.

The Department shall require any controlling person or persons to submit to a criminal history record check. All costs associated with obtaining a background check are the responsibility of the appraisal management company.

TITLE II. FISCAL IMPACT STATEMENT; EFFECTIVE DATE.

Sec. 201. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 202. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 29,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-145

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 29, 2019

To approve, on an emergency basis, Modification Nos. 4, 5, 6, 7, and 8 to Contract No. CW58761 with Cradle Systems, LLC, to provide information technology equipment and software, and to authorize payment for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modification Nos. 4, 5, 6, 7 and 8 to Contract No. CW58761 Approval and Payment Authorization Emergency Act of 2019".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 4, 5, 6, 7, and 8 to Contract No. CW58761 with Cradle Systems, LLC, to provide information technology equipment and software and authorizes payment in the not-to-exceed amount of $10 million for goods and services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

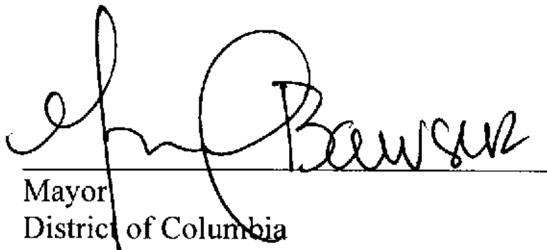
Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
October 29,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-146

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 29, 2019

To approve, on an emergency basis, a Capital Funding Agreement with the Washington Metropolitan Area Transit Authority to provide capital funding for a capital improvement program from July 1, 2019, through June 30, 2020.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this bill may be cited as the "Washington Metropolitan Area Transit Authority Fiscal Year 2020 Capital Funding Agreement Emergency Act of 2019".

Sec. 2. (a) Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), the Council approves the Washington Metropolitan Area Transit Authority Fiscal Year 2020 Capital Funding Agreement. The Mayor submitted, on October 2, 2019, a capital funding agreement with the Washington Metropolitan Area Transit Authority ("WMATA"), the State of Maryland, Arlington County, Virginia, Fairfax County, Virginia, the City of Alexandria, Virginia, the City of Fairfax, Virginia, and the City of Falls Church, Virginia ("Contributing Jurisdictions") to provide capital funding for a one-year period to a capital improvement program for the Washington Metro System from July 1, 2019 to June 30, 2020.

(b) The Council approves this multiyear contract with WMATA and the Contributing Jurisdictions in the not-to-exceed amount of $92,700,000, excluding funding under the Passenger Rail Investment and Improvement Act, approved October 16, 2008 (122 Stat. 4907; 49 U.S.C. § 20101, note).

Sec. 3. Fiscal impact statement.

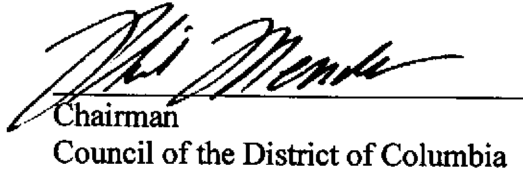
The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

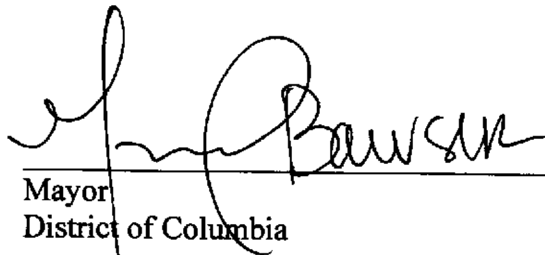
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
October 29.2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-147

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 29, 2019

To approve, on an emergency basis, a Local Capital Funding Agreement with the Washington Metropolitan Area Transit Authority to provide local capital funding for a capital improvement program from July 1, 2019, through June 30, 2020.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this bill may be cited as the "Washington Metropolitan Area Transit Authority Fiscal Year 2020 Local Capital Funding Agreement Emergency Act of 2019".

Sec. 2. (a) Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), the Council approves the Washington Metropolitan Area Transit Authority Fiscal Year 2020 Local Capital Funding Agreement. The Mayor submitted, on October 2, 2019, a local capital funding agreement with the Washington Metropolitan Area Transit Authority ("WMATA") to provide capital funding for a one-year period to a capital improvement program for the Washington Metro System from July 1, 2019, to June 30, 2020.

(b) The Council approves this multiyear local capital funding agreement with WMATA in the amount of $92,700,000, excluding funding under the Passenger Rail Investment and Improvement Act, approved October 16, 2008 (122 Stat. 4907; 49 U.S.C. § 20101, note).

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

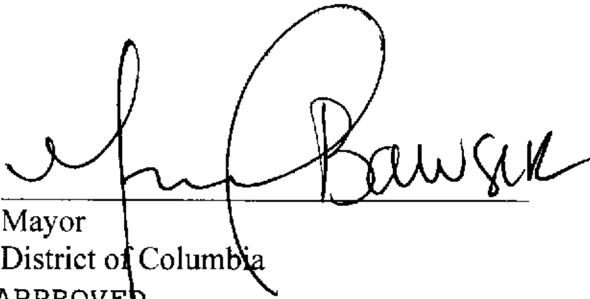
Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
October 29,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-148

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 29, 2019

To approve, on an emergency basis, Modification No. 3 to Contract No. NFPHC-2018-435-A between the Not-for-Profit Hospital Corporation ("Corporation") and George Washington University Medical Faculty Associates, Inc., to provide emergency department services to the Corporation, and to authorize payment for the goods and services received and to be received under the modification.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modification No. 3 to Contract No. NFPHC-2018-435-A Approval and Payment Authorization Emergency Amendment Act of 2019".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification No. 3 to Contract No. NFPHC-435-A between the Not-for-Profit Hospital Corporation ("Corporation") and George Washington University Medical Faculty Associates, Inc., to provide emergency department services to the Corporation and authorizes payment in the amount of $8,815,524 for the goods and services received and to be received under the modification.

Sec. 3. Fiscal impact statement.

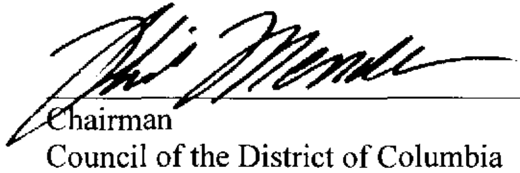
The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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



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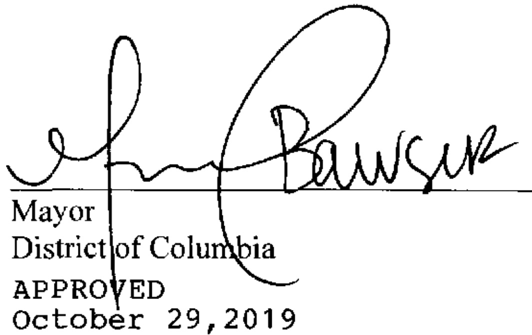
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
October 29,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-149

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 29, 2019

To approve, on an emergency basis, Modification No. 3 to Contract No. NFPHC-2018-436-A between the Not-for-Profit Hospital Corporation ("Corporation") and George Washington University Medical Faculty Associates, Inc., to provide hospitalist services to the Corporation, and to authorize payment for the services received and to be received under the modification.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modification No. 3 to Contract No. NFPHC-2018-436-A Approval and Payment Authorization Emergency Amendment Act of 2019".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Contract No. NFPHC-436-A Modification 3 between the Not-for-Profit Hospital Corporation ("Corporation") and George Washington University Medical Faculty Associates, Inc., to provide hospitalist services to the Corporation and authorizes payment in the amount of $6,456,906 for the goods and services received and to be received under the modification.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 29,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-150

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 29, 2019

To require, on an emergency basis, due to congressional review, the Mayor to establish a pilot program through which a close relative of a child may be eligible to receive subsidy payments for the care and custody of the child, to establish eligibility requirements for the subsidy, to require the Mayor to issue a report to Council evaluating the pilot program, to authorize the Mayor to issue rules to implement provision of the pilot program, and to provide that there is no entitlement to a subsidy and the payment of any subsidy is subject to the availability of appropriations; and to amend the District of Columbia Public Assistance Act of 1982 to make a conforming amendment.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Close Relative Caregiver Subsidy Pilot Program Establishment Congressional Review Emergency Amendment Act of 2019".

TITLE I. CLOSE RELATIVE CAREGIVER PILOT PROGRAM.

Sec. 101. Definitions.

For the purposes of this act, the term:

(1) "Agency" means the Child and Family Services Agency established by section 301a of the Prevention of Child Abuse and Neglect Act of 1977, effective April 4, 2001 (D.C. Law 13-277; D.C. Official Code § 4-1303.01a).

(2) "Close relative" means an adult who is a brother, sister, aunt, uncle, nephew, niece, or cousin of a child and related to the child by blood, marriage, domestic partnership, or adoption.

(3) "Criminal background check" means the investigation of an individual's criminal history through the record systems of the Federal Bureau of Investigation and the Metropolitan Police Department.

(4) "Temporary Assistance for Needy Families" or "TANF" means the Temporary Assistance for Needy Families program established by section 201(5) of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C.

ENROLLED ORIGINAL

Official Code § 4-202.01(5)).

Sec. 102. Establishment of a pilot program to provide subsidies for close relative caregivers.

(a) By December 31, 2019, the Mayor shall establish a pilot program through which eligible close relative caregivers may receive subsidy payments for the care and custody of a child residing in their home ("Pilot Program").

(b) The Pilot Program shall continue through September 30, 2023.

Sec. 103. Eligibility.

(a) A close relative may be eligible to receive subsidy payments under the Pilot Program if:

(1) The close relative has been the child's primary caregiver for at least the previous 6 months;

(2) The child has resided in the close relative's home for at least the previous 6 months;

(3) The child's parent has not resided in the close relative's home for at least the previous 6 months; provided, that a parent may reside in the home without disqualifying the close relative from receiving a subsidy if:

(A) The parent has designated the close relative to be the child's standby guardian pursuant to D.C. Official Code § 16-4806;

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

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

(4) The close relative and all adults residing in the close relative's home have submitted to a criminal background check;

(5) The close relative's household income is under 200% of the federally defined poverty level;

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

(7) The close relative has applied for TANF benefits for the child;

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

(9) The close relative is not currently receiving a guardianship or adoption subsidy for the child;

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

(11) The close relative has met any additional requirements prescribed by the Mayor pursuant to rules issued under section 106.

(b) The Mayor may waive the eligibility requirements established in subsection (a)(1) and (2) of this section if:

(1) The Agency determines that the child is at risk of removal from the parent, guardian, or custodian pursuant to section 107 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.07);

(2) The parent, guardian, or custodian permits the close relative to be the child's primary caregiver; and

(3) The parent, guardian, or custodian permits the child to reside with the close relative.

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

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

(d)(1) The Mayor shall terminate subsidy payments to a close relative if, at any time:

(A) The Mayor determines the close relative no longer meets the eligibility requirements established by this section, or by rules issued under section 106; or

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

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

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

(f) An applicant whose application for a subsidy has been denied or whose subsidy has been terminated shall be entitled to a hearing under the applicable provisions of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*); provided, that a close relative shall not be entitled to a hearing if the denial or termination of a subsidy is based on the unavailability of appropriated funds.

ENROLLED ORIGINAL

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

Sec. 104. Subsidies.

(a) All subsidies established under the Pilot Program shall be subject to the availability of appropriations. Nothing in this act shall be construed as creating an entitlement to a subsidy for any person.

(b) The amount of subsidy shall be based on the amount of the subsidy that a grandparent caregiver is eligible to receive pursuant to section 104 of the Grandparent Caregivers Pilot Program Establishment Act of 2005, effective March 8, 2006 (D.C. Law 16-69; D.C. Official Code § 4-251.04).

(c) The amount of a subsidy a close relative caregiver is eligible to receive under the Pilot Program shall be offset by any amount a close relative receives as TANF or Supplemental Security Income for the child.

(d) The Mayor may give priority to the application of a close relative for a subsidy if the Agency determines that the child is at risk of removal from the parent, guardian or custodian pursuant to section 107 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.07).

Sec. 105. Reports.

Beginning February 28, 2021, and on an annual basis thereafter, the Mayor shall issue a report to the Council regarding the Pilot Program. At a minimum, the report shall include:

(1) The number of applications filed for the subsidy;

(2) The number of subsidies awarded;

(3) The number of families receiving both the subsidy and TANF;

(4) The number of applications denied for failure to meet eligibility criteria;

(5) The number of applications denied for lack of appropriated funding;

(6) An estimate of the number of close relative caregivers whose income is less than 200% of the federally-defined poverty level but who have not applied for the subsidy;

(7) The number of subsidies terminated by the Mayor pursuant to section 103(d) or voluntarily by the close relative caregiver;

(8) The number of substantiated cases of fraud and a comparison of this figure to the proportion of cases of fraud involving other benefit programs, including TANF, food stamps, and Medicaid;

ENROLLED ORIGINAL

(9) The number of children removed from households receiving a subsidy under the Pilot Program due to a substantiated allegation of child abuse or neglect; and

(10) Any legislative, policy, or administrative recommendations of the Family Court of the Superior Court of the District of Columbia or of agencies designated by the Mayor to execute the provisions of this act that are intended to enhance the effectiveness of the Pilot Program.

Sec. 106. Rules.

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

Sec. 107. Construction.

(a) Nothing in this act shall be construed as relieving the parent of a child from any child support order regarding the child for whom a close relative caregiver is receiving a subsidy under this act.

(b) Nothing in this act shall be construed to create a new cause of action or to limit the rights or remedies available to parents in custody or guardianship actions.

TITLE II. CONFORMING AMENDMENT.

Sec. 201. Section 511(a) of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.11(a)), is amended as follows:

(a) Paragraph (8) is amended by striking the word "and" at the end.

(b) Paragraph (9) is amended by striking the period at the end and inserting the phrase "; and" in its place;

(c) A new paragraph (10) is added to read as follows:

"(10) Disregard any subsidy received under the pilot program established by section 102 of the Close Relative Caregiver Subsidy Pilot Program Establishment Congressional Review Emergency Amendment Act of 2019, passed on emergency basis on October 8, 2019 (Enrolled version of Bill 23-___).".

TITLE III. APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE.

Sec. 301. Applicability.

This act shall apply as of October 14, 2019.

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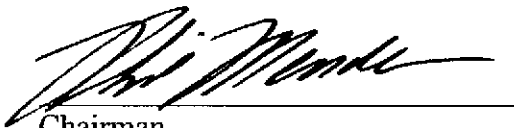
Sec. 302. Fiscal impact statement.

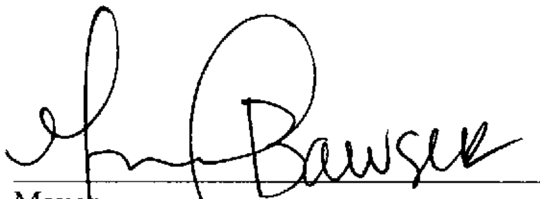
The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 303. Effective date.

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
October 29,2019

6

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-151

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 29, 2019

To amend, on an emergency basis, due to congressional review, the District of Columbia Public Assistance Act of 1982 to extend prohibition on the denial of cash or food assistance benefits to adults who are drug felons to include benefits obtained through the Supplemental Nutrition Assistance Program, the Program on Work, Employment, and Responsibility, the General Assistance for Children Program, and the Interim Disability Assistance Program.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Access to Public Benefits Congressional Review Emergency Amendment Act of 2019".

Sec. 2. Section 571 of the District of Columbia Public Assistance Act of 1982, effective April 20, 1999 (D.C. Law 12-241; D.C. Official Code § 4-205.71), is amended to read as follows:

"Sec. 571. Granting cash and food assistance benefits to drug felons.

"An adult who is a drug felon shall not be denied cash or food assistance benefits, including TANF, Supplemental Nutrition Assistance Program, POWER, GAC, or Interim Disability Assistant benefits, solely because he or she is a drug felon.".

Sec. 3. Applicability.

This act shall apply as of October 5, 2019.

Sec. 4. Fiscal impact statement.

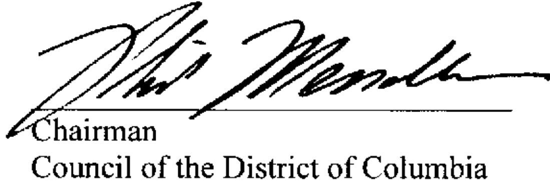
The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)).

Sec. 5. Effective date.

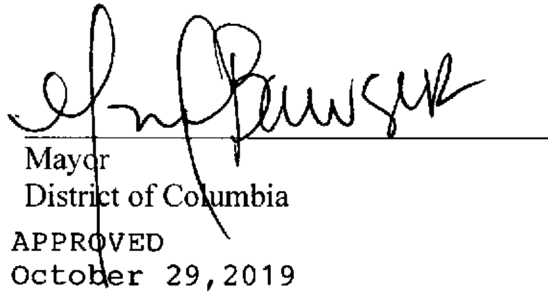
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
October 29,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-152

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 29, 2019

To officially designate the therapeutic recreation center located at 3030 G Street, S.E., as the Joy Evans Therapeutic Recreation Center and to remove certain designations of public spaces and facilities.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Joy Evans Therapeutic Recreation Center Designation Act of 2019".

Sec. 2. Pursuant to section 401 of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-204.01) ("Act"), and notwithstanding section 422 of the Act (D.C. Official Code § 9-204.22), the Council officially designates the therapeutic recreation center located at 3030 G Street, S.E., as the "Joy Evans Therapeutic Recreation Center".

Sec. 3. Pursuant to section 401 of the Act (D.C. Official Code § 9-204.01), and notwithstanding any other provision of the Act, the Council removes the "Joy Evans" designation of any public space or facility in Lots 807 and 811 in Square 853N.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

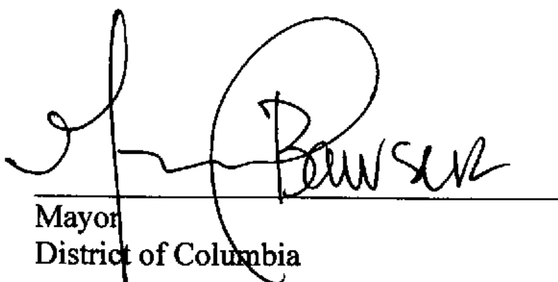
Sec. 5. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
October 29,2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-153

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 30, 2019

To officially designate, on an emergency basis, due to congressional review, the new middle school in Square 3269 as Wells Middle School; to disapprove the Master Facilities Plan submitted by the Mayor to the Council; and to amend the School Based Budgeting and Accountability Act of 1998 to no longer require that the Council vote on the 10-year Master Facilities Plan concurrently with its vote on the Mayor's capital budget proposal.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Wells School Designation and Master Facilities Plan Disapproval Congressional Review Emergency Amendment Act of 2019".

Sec. 2. Pursuant to sections 401 and 422 of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code §§ 9-204.01 and 9-204.22) ("Act"), and notwithstanding section 422(a) of the Act (D.C. Official Code § 9-204.22(a)), the Council officially designates the new middle school in Square 3269 as "Ida B. Wells Middle School".

Sec. 3. Notwithstanding Section 1104(a)(1) of the School Based Budgeting and Accountability Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 38-2803(a)), the DC Public Education Master Facilities Plan 2018, submitted by the Mayor to the Council of the District of Columbia on March 15, 2019, is disapproved.

Sec. 4. Section 1104(a) of the School Based Budgeting and Accountability Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 38-2803(a)), is amended by striking the phrase "in accordance with this section. The Council shall vote on the 10-year Master Facilities Plan concurrently with its vote on the Mayor's capital budget proposal." and inserting the phrase "in accordance with this section." in its place.

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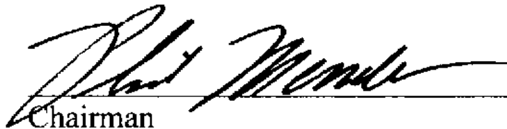
Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Wells School Designation and Master Facilities Plan Disapproval Amendment Act of 2019, enacted on October 7, 2019 (D.C. Act 23-122; 66 DCR _____), as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 6. Effective date.

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



Chairman
Council of the District of Columbia

UNSIGNED

Mayor
District of Columbia
October 29,2019

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ENROLLED ORIGINAL

A RESOLUTION

23-245

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 22, 2019

To declare the existence of an emergency with respect to the need to make minor, technical, and clarifying amendments to various budget-related provisions of law.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Fiscal Year 2020 Budget Support Clarification Emergency Declaration Resolution of 2019".

Sec. 2. (a) On June 18, 2019, the Council passed the Fiscal Year 2020 Budget Support Act of 2019, effective September 11, 2019 (D.C. Law 23-16; 66 DCR 8621) ("Act"). Following the passage of the Act, staff at the Council and the Office of the Chief Financial Officer identified certain provisions of law that need to be clarified or amended to effectuate the Council's intent.

(b) The proposed modifications include clarifying provisions, technical amendments, or other minor amendments that must go into effect immediately to clarify the law and implement the Fiscal Year 2020 Budget and Financial Plan as approved by the District.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Fiscal Year 2020 Budget Support Clarification Emergency Amendment Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

BILL

B23-511 Uninsured Motorist Fund Reciprocity Amendment Act of 2019

Intro. 10-23-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development with comments from the Committee on Transportation and the Environment

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

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 23-215, Security Breach Protection Amendment Act of 2019

on

Tuesday, November 12, 2019, 11:00 a.m.
Room 412, Council Chambers, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on Bill 23-215, the "Security Breach Protection Amendment Act of 2019." The hearing will be held at **11:00 a.m.** on **Tuesday, November 12, 2019** in **Room 412** of the John A. Wilson Building. ***This notice is being revised to reflect the change in the time of the hearing from 10:00 a.m. to 11:00 a.m.***

The stated purpose of **Bill 23-215** is to strengthen the protections for personal information released to unauthorized people because of a breach of the security of a computer system. The bill expands the definition of personal information; adds additional requirements for the contents of a notification of a security breach to consumers; requires notification to the Office of Attorney General; requires persons and entities that possess personal information to implement and maintain reasonable security procedures and practices; and requires a company to provide two years of identity theft protections to an individual when his or her social security number or tax identification number is part of the security breach. Finally, the bill makes a violation of the data breach law a violation of the District's Consumer Protection Procedures Act.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or call Peter Johnson at (202) 724-8083, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business **Thursday, November 7, 2019.** Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on November 7, 2019 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. Copies of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://lims.dccouncil.us. Hearing materials, including a draft witness list, can be accessed at http://www.chairmanmendelson.com/circulation, 24 hours in advance of the hearing.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on November 26, 2019.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

REVISED

NOTICE OF PUBLIC HEARING ON

B23-390, the Urban Farming Land Lease Amendment Act of 2019; and B23-407, the Lead Hazard Prevention and Elimination Amendment Act of 2019

Monday, November 18, 2019, at 11:00 AM
in Room 123 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Monday, November 18, 2019, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B23-390, the Urban Farming Land Lease Amendment Act of 2019, and B23-40, the Lead Hazard Prevention and Elimination Amendment Act of 2019. The hearing will begin at 11:00 AM in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B23-390 would allow the District to enter into a lease agreement with a qualified applicant to create and maintain an urban farm on vacant land, authorize the Department of Energy and Environment to waive soil testing requirements for a lessee who agrees to not plant in or use the site soil of the leased property, revise the mission of the Office of Urban Agriculture, and clarify soil testing requirements for the urban farm tax abatement program. B23-407 would modify acceptable levels of lead exposure in a dwelling unit, require the Mayor to withhold license, registration or permits until a building owner has provided a clearance report regarding compliance with lead exposure standards, establish an Indoor Lead Hazard Reduction Fund to provide financial assistance to owners of residential properties constructed before 1978 and occupied by low-income tenants to comply with requirements of the law, and establish a private right of action for tenants where a landlord fails to comply with the Act's requirements.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official record. Anyone wishing to testify should contact Ms. Aukima Benjamin, Staff Assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at abenjamin@dccouncil.us. Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring eight copies of their written testimony and should submit a copy of their testimony electronically to abenjamin@dccouncil.us.

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Benjamin at the following address: Committee on Transportation and the Environment, John

A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on December 2, 2019.

This hearing notice is revised to reflect that the hearing location has been moved from Room 412 to Room 123.

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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

On

Academic Achievement in the District of Columbia Public and Public Charter Schools

On

Friday, November 22, 2019
9:30 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Chairman Phil Mendelson and Councilmember David Grosso announce a joint public oversight hearing of the Committee of the Whole and the Committee on Education on "Academic Achievement in the District of Columbia Public and Public Charter Schools." This hearing will be held at 9:30 a.m. on Friday, November 22, 2019 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of this oversight hearing is to discuss Academic Achievement in DC Public and Public Charter Schools by examining and discussing the performance and plans for growth of District public schools on the Partnership for Assessment of Readiness for College and Careers (PARCC), the National Assessment of Educational Progress (NAEP), as well as Adjusted Cohort Graduation Rate (ACGR). Due to the nature of this hearing, the witness list will be limited to government witnesses and witnesses requested by the Committees.

While testimony is limited to invited and government witnesses, the public and organizations are welcome to submit written statements. If submitted by the close of business on November 20, 2019, these statements will be distributed to Councilmembers before the hearing. Copies of written statements should be submitted by email to Ashley Strange, astrange@dccouncil.us, or by mail to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close Friday, December 6, 2019 at 5pm.

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

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC OVERSIGHT HEARING

on

Implementation of Law 22-307, the Short-Term Rental Regulation Act of 2018

on

Thursday, November 21, 2019, 10:00 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public oversight hearing before the Committee of the Whole on implementation of the "Short-Term Rental Regulation Act of 2018" (Law 22-307). The hearing will be held on **Thursday, November 21, 2019 at 10:00 a.m. in Room 412** of the John A. Wilson Building.

Law 22-307, effective as of October 2019, requires the Department of Consumer and Regulatory Affairs (DCRA) to license, monitor, and investigate short-term rentals in the District. Under the law, short-term rental hosts must apply for a short-term rental or vacation rental license endorsement and adhere to prescribed safety and record keeping standards. Platforms such as Airbnb and VRBO must submit monthly reports to DCRA for enforcement purpose, collect and remit all required transient occupancy taxes, and maintain all records for two years in addition other requirements. With the unanimous approval of an emergency text amendment to the zoning regulations by the Zoning Commission on October 24, 2019, DCRA is now able to efficiently and effectively implement Law 22-307 to ensure that hosts and platforms are compliant. This will be the focus of the Committee's public oversight hearing.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or to call Blaine Stum, Legislative Policy Advisor, at (202) 724-8092. Provide your name, address, telephone number, organizational affiliation, and title (if any) by the close of business **Tuesday, November 19, 2019**. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on November 19th the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a larger number of witnesses. Copies of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://lims.dccouncil.us. Hearing materials, including a draft witness list, can be accessed at http://www.chairmanmendelson.com/circulation, 24 hours in advance of the hearing at.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Thursday, December 5, 2019.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION
NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE
1350 Pennsylvania Avenue, NW, Washington, DC 20004

COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION

ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE

on the matter of

Resident Safety on Public Housing Properties

on

Thursday, November 7, 2019, at 10:00 AM
1350 Pennsylvania Ave. NW
Washington, DC 20004
Room 123

On Thursday, November 7, 2019, Councilmember Anita Bonds will hold a public oversight roundtable to discuss resident safety on public housing properties. Resident safety is maintained on public housing properties by the Housing Authority's own DCHA Police Department (DCHAPD). The roundtable will focus on the performance of the DCHAPD and its partnerships with other agencies and organizations as it maintains the safety of residents on and around public housing.

Those who wish to testify are requested to telephone the Committee on Housing and Neighborhood Revitalization, at (202) 724-8198, or email housing@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any), by close of business on November 6, 2019. Persons wishing to testify are encouraged to **submit 15 copies of written testimony**. Oral testimony will be limited to three minutes.

If you are unable to testify at the public roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Housing and Neighborhood Revitalization, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite G6, Washington, D.C. 20004. The record will close at 5:00 p.m. on November 21, 2019.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Grant Budget Modification

Pursuant to the Consolidated Appropriations Act of 2017, approved May 5, 2017 (P.L. 115-31), the Council of the District of Columbia gives notice that the Mayor has transmitted the following Grant Budget Modification (GBM).

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

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

GBM 23-53: FY 2019 Grant Budget Modifications of October 21, 2019

RECEIVED: 14-day review begins October 24, 2019

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

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

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

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

Reprog. 23-48: Request to reprogram $950,000 of Fiscal Year 2019 Local funds budget authority within the Office of the Chief Financial Officer (OCFO) was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to align the agency's budget with projected expenditures through the end of the fiscal year.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-49: Request to reprogram $5,200,000 of Local funds budget authority from multiple agencies to the Department of General Services (DGS) was filed in the Office of the Secretary on October 23, 2019. This reprogramming ensures that DGS will be able to support its financial obligations for electricity and water from the remainder of the fiscal year.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-50: Request to reprogram $5,613,256 of Local funds budget authority within the Department of General Services (DGS) was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to ensure that there is no duplication in the recordation of capitalized leases as long-term debt, in accordance with Generally Accepted Accounting Principles (GAAP) and will address spending pressures pertaining to short-term operating leases in FY 2019.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-51: Request to reprogram $500,000 of Paygo Capital funds budget authority and allotment from the District of Columbia Public Schools (DCPS) through Reverse Pay-As-You-Go (Paygo) Capital to pay back a Contingency Cash Reserve allocation was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to enable the repayment of contingency cash.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-52: Request to reprogram $1,492,518 of Fiscal Year 2019 Local funds budget authority within the Department of Housing and Community Development (DHCD) was filed in the Office of the Secretary on October 23, 2019. This reprogramming ensures that sufficient resources are available to cover all Employer Assisted Housing Program expenditures.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-53: Request to reprogram $881,827 of Fiscal Year 2019 Local funds budget authority from multiple agencies to the Fire and Emergency Medical Services Department (FEMS) was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to ensure that FEMS will be able to support personal services costs for the remainder of the fiscal year.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-54: Request to reprogram $3,329,465 of Fiscal Year 2019 Local funds budget authority from multiple Public Safety and Justice (PSJ) Cluster agencies to the Commission on Judicial Disabilities and Tenure (CJDT) and the Fire and Emergency Medical Services Department (FEMS) was filed in the Office of the Secretary on October 23, 2019. This reprogramming ensures that CJDT and FEMS will be able to support personal services costs for the remainder of the Fiscal Year.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-55: Request to reprogram $1,114,250 of Fiscal Year 2019 Local funds budget authority within the Office of the Chief Financial Officer (OCFO) was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to support the agency's lastest spending plan for the Modernized Integrated Tax System (MITS) project, including providing funding for the first year of MITS maintenance and operational support.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-56: Request to reprogram $680,000 of Fiscal Year 2019 Local funds budget authority within the Office of the Chief Financial Officer (OCFO) was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to support the increased cost of merchant services fees within the Office of Finance and Treasury.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-57: Request to reprogram $1,557,339 of Fiscal Year 2019 Local funds budget authority within the Department of Housing and Community Development (DHCD) was filed in the Office of the Secretary on October 23, 2019. This reprogramming ensures that the agency will be able to properly align the budget with revised programmatic expenditures.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-58: Request to reprogram $2,700,000 of Fiscal Year 2019 Local funds budget authority from the Department of Human Services (DHS) to the Department on Disability Services (DDS) was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to increase the local match for services provided to DDS clients through the Home and Community Based Services waiver.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-59: Request to reprogram $5,000,000 of Fiscal Year 2019 Local funds budget authority from multiple agencies to the Metropolitan Police Department (MPD) was filed in the Office of the Secretary on October 23, 2019. This reprogramming ensures that MPD has adequate funding to cover financial obligations related to school security.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-60: Request to reprogram $752,000 of Paygo Capital funds budget authority and allotment from the Department of Parks and Recreation (DPR) through Reverse Pay-As-You-Go (Paygo) Capital to pay back was filed in the Office of the Secretary on October 23, 2019. This reprogramming will repay contingency cash funding to replace the turf fields at Parkview and Upshur recreation centers that failed a recent gmax test, as outlined o the attached attribute sheet.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-61: Request to reprogram $760,000 of Local Funds Budget Authority from the Department of Behavioral Health (DBH) to the Department of Public Works (DPW) was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to ensure that DPW meets financial obligations with regard to overtime for hauling and waste disposal.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-62: Request to reprogram $1,960,548 of Fiscal Year 2019 Local Funds budget authority within the DC Public Library (DCPL) was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to properly align the budget with actual expenditures.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-63: Request to reprogram $490,000 of Fiscal Year 2019 Local funds budget authority within the Department of Energy and Environment (DOEE) was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to meet the financial obligations with regards to hauling and disposal of district trash and refuse.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-64: Request to reprogram $1,565,000 of Fiscal Year 2019 Local funds budget within the Department of Employment Services (DOES) was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to align the budget with actual expenditures.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-65: Request to reprogram $670,599 of Fiscal Year 2019 Local funds budget authority within the Office of the Deputy Mayor for Planning and Economic Development (DMPED) was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to support funding commitments with the Metropolitan Police Department for security and traffic control service at the Saint Elizabeths Entertainment and Sports Arena, and to reconcile Purchase Card expenditures.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-66: Request to reprogram $617,150 of Fiscal Year 2019 Special Purpose Revenue funds budget authority within the Public Service Commission (PSC) was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to support critical financial obligations for the remainder of the fiscal year.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-67: Request to reprogram $3,930,000 of Local funds budget authority within the Department of General Services (DGS) was filed in the Office of the Secretary on October 23, 2019. This reprogramming will ensure that the agency will fully fund energy bills for electricity, water, natural gas and auto fuel that have been higher than budgeted because of both higher prices and consumption.

RECEIVED: 14-day review begins October 24, 2019

Reprog. 23-68: Request to reprogram $258,000 of Fiscal Year 2019 Special Purpose Revenue funds budget authority within the Department of Housing and Community Development (DHCD) was filed in the Office of the Secretary on October 23, 2019. This reprogramming is needed to support non-personal services expenditures for the Employee-Assisted Housing Program.

RECEIVED: 14-day review begins October 24, 2019

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 1, 2019
Protest Petition Deadline: December 16, 2019
Roll Call Hearing Date: December 30, 2019

License No.: ABRA-103693
Licensee: Capo, LLC
Trade Name: Capo
License Class: Retailer's Class "C" Tavern
Address: 715 Florida Avenue, N.W.
Contact: Sidon Yohannes, Esq.: (202) 686-7600

WARD 1 ANC 1B SMD 1B01

Notice is hereby given that this licensee has requested a Substantial Change to their 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 December 30, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF OPERATION
Licensee is applying to add Sports Wagering to their operations. Establishment will have one sports wagering machine and a cellphone application available to download on the premises.

HOURS OF OPERATION (INSIDE PREMISES)
Sunday – Thursday 7am – 2am
Friday and Saturday 7am – 3am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (INSIDE PREMISES)
Sunday – Thursday 8am – 2am
Friday and Saturday 8am – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/1/2019

Notice is hereby given that:
License Number: ABRA-105922 **License Class/Type: C Tavern**
Applicant: Vivid, LLC
Trade Name: Vivid
ANC: 1B12

Has applied for the renewal of an alcoholic beverage license at the premises:
1334 U ST NW, Washington, DC 20009

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
12/16/2019

A HEARING WILL BE
12/30/2019

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

ENDORSEMENT(S): Cover Charge Dancing Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	6am - 2am	10am - 2am	6pm - 2am
Monday:	6am - 2am	8am - 2am	6pm - 2am
Tuesday:	6am - 2am	8am - 2am	6pm - 2am
Wednesday:	6am - 2am	8am - 2am	6pm - 2am
Thursday:	6am - 2am	8am - 2am	6pm - 2am
Friday:	6am - 3am	8am - 3am	6pm - 3am
Saturday:	6am - 3am	8am - 3am	6pm - 3am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/1/2019

Notice is hereby given that:
License Number: ABRA-100259 **License Class/Type: C Tavern**
Applicant: Omar, LLC
Trade Name: Costello Restaurant and Lounge
ANC: 4D04

Has applied for the renewal of an alcoholic beverage license at the premises:
5201 GEORGIA AVE NW, WASHINGTON, DC 20011

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
12/16/2019

A HEARING WILL BE
12/30/2019

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

ENDORSEMENT(S): Entertainment Sidewalk Cafe

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	10AM - 12AM	10AM - 12AM	6PM - 12AM
Monday:	10AM - 12AM	10AM - 12AM	6PM - 12AM
Tuesday:	10AM - 12AM	10AM - 12AM	6PM - 12AM
Wednesday:	10AM - 12AM	10AM - 12AM	6PM - 12AM
Thursday:	10AM - 12AM	10AM - 12AM	6PM - 12AM
Friday:	10AM - 12AM	10AM - 12AM	6PM - 12AM
Saturday:	10AM - 12AM	10AM - 12AM	6PM - 12AM

	Hours Of Sidewalk Cafe	Hours Of Sales Sidewalk Cafe
Sunday	10AM - 11PM	10AM - 11PM
Monday:	10AM - 11PM	10AM - 11PM
Tuesday:	10AM - 11PM	10AM - 11PM
Wednesday:	10AM - 11PM	10AM - 11PM
Thursday:	10AM - 11PM	10AM - 11PM
Friday:	10AM - 12AM	10AM - 12AM
Saturday:	10AM - 12AM	10AM - 12AM

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/1/2019

Notice is hereby given that:
License Number: ABRA-104058 **License Class/Type: C Tavern**
Applicant: Umanzor Corporation
Trade Name: Lesly's Grill
ANC: 4D06

Has applied for the renewal of an alcoholic beverage license at the premises:
4811 GEORGIA AVE NW, WASHINGTON, DC 20011

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
12/16/2019

A HEARING WILL BE
12/30/2019

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

ENDORSEMENT(S): Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	8 am - 2 am	8 am - 2 am	6 pm - 2 am
Monday:	8 am - 2 am	8 am - 2 am	6 pm - 2 am
Tuesday:	8 am - 2 am	8 am - 2 am	6 pm - 2 am
Wednesday:	8 am - 2 am	8 am - 2 am	6 pm - 2 am
Thursday:	8 am - 2 am	8 am - 2 am	6 pm - 2 am
Friday:	8 am - 3 am	8 am - 3 am	6 pm - 3 am
Saturday:	8 am - 3 am	8 am - 3 am	6 pm - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/1/2019

Notice is hereby given that:
License Number: ABRA-103087 **License Class/Type: C Tavern**
Applicant: Bundle Bit, LLC
Trade Name: Elle
ANC: 1D04

Has applied for the renewal of an alcoholic beverage license at the premises:
3221 MOUNT PLEASANT ST NW, #B, WASHINGTON, DC 20010

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
12/16/2019

A HEARING WILL BE
12/30/2019

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

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	7 am - 2 am	8 am - 2 am	-
Monday:	7 am - 2 am	8 am - 2 am	-
Tuesday:	7 am - 2 am	8 am - 2 am	-
Wednesday:	7 am - 2 am	8 am - 2 am	-
Thursday:	7 am - 2 am	8 am - 2 am	-
Friday:	7 am - 3 am	8 am - 3 am	-
Saturday:	7 am - 3 am	8 am - 3 am	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/1/2019

Notice is hereby given that:
License Number: ABRA-092192 **License Class/Type: C Tavern**
Applicant: Fernando Postigo
Trade Name: Sol Mexican Grill
ANC: 6A02

Has applied for the renewal of an alcoholic beverage license at the premises:
1251 H ST NE, WASHINGTON, DC 20002

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
12/16/2019

A HEARING WILL BE
12/30/2019

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

ENDORSEMENT(S): Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11am - 11pm	11am - 10:45pm	-
Monday:	11am - 11pm	11am - 10:45pm	-
Tuesday:	11am - 11pm	11am - 10:45pm	-
Wednesday:	11am - 11pm	11am - 10:45pm	-
Thursday:	11am - 11pm	11am - 10:45pm	-
Friday:	11am - 3am	11am - 2am	6pm - 1am
Saturday:	11am - 3am	11am - 2am	6pm - 1am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/1/2019

Notice is hereby given that:
License Number: ABRA-094244 **License Class/Type: C Nightclub**
Applicant: RCX, LLC
Trade Name: Stadium Club
ANC: 5C02

Has applied for the renewal of an alcoholic beverage license at the premises:
2127 QUEENS CHAPEL RD NE, WASHINGTON, DC 20018

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
12/16/2019

A HEARING WILL BE
12/30/2019

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

ENDORSEMENT(S): Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 3 am	11 am - 2 am	-
Monday:	11 am - 3 am	11 am - 2 am	-
Tuesday:	11 am - 3 am	11 am - 2 am	-
Wednesday:	11 am - 3 am	11 am - 2 am	-
Thursday:	11 am - 3am	11 am - 2 am	-
Friday:	11 am - 4 am	11 am - 3 am	-
Saturday:	11 am - 4 am	11 am - 3 am	-

	Hours of Summer Garden	Hours of Sales Summer Garden
Sunday	11 am - 2 am	11 am - 2 am
Monday:	11 am - 2 am	11 am - 2 am
Tuesday:	11 am - 2 am	11 am - 2 am
Wednesday:	11 am - 2 am	11 am - 2 am
Thursday:	11 am - 2 am	11 am - 2 am
Friday:	11 am - 3 am	11 am - 3 am
Saturday:	11 am - 3 am	11 am - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/1/2019

Notice is hereby given that:
License Number: ABRA-107244 **License Class/Type: C Tavern**
Applicant: Brompton Group, LLC
Trade Name: Columbus Club
ANC: 6C04

Has applied for the renewal of an alcoholic beverage license at the premises:
50 MASSACHUSETTS AVE NE, WASHINGTON, DC 20002

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
12/16/2019

A HEARING WILL BE
12/30/2019

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

ENDORSEMENT(S): Dancing Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	6 am - 2 am	10 am - 2 am	6 pm - 2 am
Monday:	6 am - 2 am	9 am - 2 am	6 pm - 2 am
Tuesday:	6 am - 2 am	9 am - 2 am	6 pm - 2 am
Wednesday:	6 am - 2 am	9 am - 2 am	6 pm - 2 am
Thursday:	6 am - 2 am	9 am - 2 am	6 pm - 2 am
Friday:	6 am - 2 am	9 am - 2 am	6 pm - 2 am
Saturday:	6 am - 2 am	9 am - 2 am	6 pm - 2 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/1/2019

Notice is hereby given that:
License Number: ABRA-114201 **License Class/Type: C Tavern**
Applicant: Braxton Restaurant & Bar, LLC
Trade Name: Mr. Braxton Bar and Kitchen
ANC: 1A08

Has applied for the renewal of an alcoholic beverage license at the premises:
3632 GEORGIA AVE NW, WASHINGTON, DC 20010

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
12/16/2019

A HEARING WILL BE
12/30/2019

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

ENDORSEMENT(S): Cover Charge Dancing Entertainment Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	8 am - 2 am	8 am - 2 am	9 am - 2 am
Monday:	8 am - 2 am	8 am - 2 am	10 am - 2 am
Tuesday:	8 am - 2 am	8 am - 2 am	10 am - 2 am
Wednesday:	8 am - 2 am	8 am - 2 am	10 am - 2 am
Thursday:	8 am - 2 am	8 am - 2 am	10 am - 2 am
Friday:	8 am - 3 am	8 am - 3 am	10 am - 3 am
Saturday:	8 am - 3 am	8 am - 3 am	9 am - 3 am

	Hours of Summer Garden	Hours of Sales Summer Garden
Sunday	8 am - 2 am	8 am - 2 am
Monday:	8 am - 2 am	8 am - 2 am
Tuesday:	8 am - 2 am	8 am - 2 am
Wednesday:	8 am - 2 am	8 am - 2 am
Thursday:	8 am - 2 am	8 am - 2 am
Friday:	8 am - 3 am	8 am - 3 am
Saturday:	8 am - 3 am	8 am - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/1/2019

Notice is hereby given that:
License Number: ABRA-073821 **License Class/Type: C Tavern**
Applicant: BBH, LLC
Trade Name: Cleveland Park Bar & Grill
ANC: 3C04

Has applied for the renewal of an alcoholic beverage license at the premises:
3421 CONNECTICUT AVE NW, Washington, DC 20008

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
12/16/2019

A HEARING WILL BE
12/30/2019

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

ENDORSEMENT(S): Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 1:30 am	11 am - 1:30 am	-
Monday:	5 pm - 1:30 am	5 pm - 1:30 am	-
Tuesday:	5 pm - 1:30 am	5 pm - 1:30 am	-
Wednesday:	5 pm - 1:30 am	5 pm - 1:30 am	-
Thursday:	5 pm - 1:30 am	5 pm - 1:30 am	-
Friday:	5 pm - 3 am	5 pm - 3 am	-
Saturday:	11 am - 3 am	11 am - 3 am	-

	Hours of Summer Garden	Hours of Sales Summer Garden
Sunday	11 am - 1:30 am	11 am - 1:30 am
Monday:	5 pm - 1:30 am	5 pm - 1:30 am
Tuesday:	5 pm - 1:30 am	5 pm - 1:30 am
Wednesday:	5 pm - 1:30 am	5 pm - 1:30 am
Thursday:	5 pm - 1:30 am	5 pm - 1:30 am
Friday:	5 pm - 3 am	5 pm - 3 am
Saturday:	11 am - 3 am	11 am - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/1/2019

Notice is hereby given that:
License Number: ABRA-109076 **License Class/Type: C Tavern**
Applicant: Taqueria Local, LLC
Trade Name: Taqueria Local
ANC: 2B05

Has applied for the renewal of an alcoholic beverage license at the premises:
1627 K ST NW, WASHINGTON, DC 20006

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
12/16/2019

A HEARING WILL BE
12/30/2019

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

ENDORSEMENT(S): Entertainment Sidewalk Cafe

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	8am - 2am	8am - 2am	3pm - 12am
Monday:	8am - 2am	8am - 2am	3pm - 12am
Tuesday:	8am - 2am	8am - 2am	3pm - 12am
Wednesday:	8am - 2am	8am - 2am	3pm - 12am
Thursday:	8am - 2am	8am - 2am	3pm - 12am
Friday:	8am - 3am	8am - 3am	3pm - 12am
Saturday:	8am - 3am	8am - 3am	3pm - 12am

	Hours Of Sidewalk Cafe	Hours Of Sales Sidewalk Cafe
Sunday	8am - 10pm	8am - 10pm
Monday:	8am - 10pm	8am - 10pm
Tuesday:	8am - 10pm	8am - 10pm
Wednesday:	8am - 10pm	8am - 10pm
Thursday:	8am - 10pm	8am - 10pm
Friday:	8am - 10pm	8am - 10pm
Saturday:	3pm - 10pm	8am - 10pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/1/2019

Notice is hereby given that:
License Number: ABRA-109778 **License Class/Type: C Tavern**
Applicant: EI LLC
Trade Name: Bricklane Restaurant
ANC: 6B03

Has applied for the renewal of an alcoholic beverage license at the premises:
517 8TH ST SE, WASHINGTON, DC 20003

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
12/16/2019

A HEARING WILL BE
12/30/2019

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

ENDORSEMENT(S): Sidewalk Cafe

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

	Hours Of Sidewalk Cafe	Hours Of Sales Sidewalk Cafe
Sunday	10 am - 11 pm	10 am - 11 pm
Monday:	10 am - 11 pm	10 am - 11 pm
Tuesday:	10 am - 11 pm	10 am - 11 pm
Wednesday:	10 am - 11 pm	10 am - 11 pm
Thursday:	10 am - 11 pm	10 am - 11 pm
Friday:	10 am - 11 pm	10 am - 11 pm
Saturday:	10 am - 11 pm	10 am - 11 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/1/2019

Notice is hereby given that:
License Number: ABRA-094002 **License Class/Type: C Tavern**
Applicant: 2737 Sherman Ave NW L.L.C.
Trade Name: Napoli Pasta Bar
ANC: 1B09

Has applied for the renewal of an alcoholic beverage license at the premises:
2737 SHERMAN AVE NW, WASHINGTON, DC 20001

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
12/16/2019

A HEARING WILL BE
12/30/2019

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

ENDORSEMENT(S): Sidewalk Cafe

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	10 am - 1 am	10 am - 1 am	-
Monday:	10 am - 1 am	10 am - 1 am	-
Tuesday:	10 am - 1 am	10 am - 1 am	-
Wednesday:	10 am - 1 am	10 am - 1 am	-
Thursday:	10 am - 2 am	10 am - 2 am	-
Friday:	10 am - 2 am	10 am - 2 am	-
Saturday:	10 am - 2 am	10 am - 2 am	-

	Hours Of Sidewalk Cafe	Hours Of Sales Sidewalk Cafe
Sunday	10 am - 11 pm	10 am - 11 pm
Monday:	10 am - 11 pm	10 am - 11 pm
Tuesday:	10 am - 11 pm	10 am - 11 pm
Wednesday:	10 am - 11 pm	10 am - 11 pm
Thursday:	10 am - 11 pm	10 am - 11 pm
Friday:	10 am - 11 pm	10 am - 11 pm
Saturday:	10 am - 11 pm	10 am - 11 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 1, 2019
Protest Petition Deadline: December 16, 2019
Roll Call Hearing Date: December 30, 2019

License No.: ABRA-073821
Licensee: BBH, LLC
Trade Name: Cleveland Park Bar & Grill
License Class: Retailer's Class "C" Tavern
Address: 3421 Connecticut Avenue, N.W.
Contact: Jeff Holibaugh: (301) 518-2083

WARD 3 ANC 3C SMD 3C04

Notice is hereby given that this licensee has requested a Substantial Change to their 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 December 30, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF OPERATION
Licensee is applying to add Sports Wagering to their operations. Establishment will have a mobile app to assist with the betting, and no betting kiosks on the premises.

CURRENT HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION INSIDE OF THE PREMISES AND FOR THE OUTDOOR SUMMER GARDEN
Sunday 11am – 1:30am, Monday through Thursday 5pm – 1:30am, Friday 5pm – 3am, Saturday 11am – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 1, 2019
Protest Petition Deadline: December 16, 2019
Roll Call Hearing Date: December 30, 2019
Protest Hearing Date: February 12, 2020

License No.: ABRA-114937
Licensee: IronWorks, LLC
Trade Name: Death Punch/Shabu Plus & Shibuya Eatery
License Class: Retailer's Class "C" Restaurant
Address: 2321 18th Street, N.W.
Contact: Lyle Blanchard, Esq.: (202) 452-1400

WARD 1 ANC 1C SMD 1C07

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 December 30, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **February 12, 2019 at 4:30 p.m.**

NATURE OF OPERATION
A new Retailer's Class C Restaurant with a seating capacity of 90 and a Total Occupancy Load of 170. Summer Garden with 24 seats. Entertainment Endorsement to provide live entertainment indoors only.

HOURS OF OPERATION FOR INSIDE PREMISES AND SUMMER GARDEN
Sunday through Thursday 8am – 2am, Friday and Saturday 8am – 3am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE PREMISES AND SUMMER GARDEN
Sunday 10am – 2am, Monday through Thursday 8am – 2am, Friday and Saturday 8am –3am

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 1, 2019
Protest Petition Deadline: December 16, 2019
Roll Call Hearing Date: December 30, 2019

License No.: ABRA- 114133
Licensee: Dos Mami's LLC
Trade Name: Dos Mami's
License Class: Retailer's Class "C" Tavern
Address: 819 Upshur Street, N.W.
Contact: Sidon Yohannes, Esq.: (202) 686-7600

WARD 4 ANC 4C SMD 4C07

Notice is hereby given that this licensee has requested a Substantial Change to their 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 December 30, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE
Request to change hours of operation and alcoholic beverage sales, service, and consumption for the Summer Garden.

CURRENT HOURS OF OPERATION / ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE PREMISES
Sunday 11am – 1am, Monday through Friday 2pm – 2am, Saturday 11am – 2am

CURRENT HOURS OF OPERATION / ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SUMMER GARDEN
Sunday 11am – 10pm, Monday through Friday 4pm – 10pm, Saturday 11am – 10pm

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SUMMER GARDEN
Sunday 11am – 11pm, Monday through Thursday 2pm – 11pm, Friday 2pm – 12am,
Saturday 11am – 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date: October 18, 2019
Protest Petition Deadline: December 2, 2019
Roll Call Hearing Date: December 16, 2019
Protest Hearing Date: February 5, 2020

License No.: ABRA-113353
Licensee: Grand Cata Concept, LLC
Trade Name: Grand Cata at La Cosecha
License Class: Retailer's Class "B" Full Service Grocery
Address: 1280 4th Street, N.E.
Contact: Andrew Kline, Esq.: (202) 686-7600

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 December 16, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **February 5, 2020 at 1:30 p.m.**

NATURE OF OPERATION
A new Full-Service Grocery B. **Also requesting a Tasting Permit.

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES
Sunday through Saturday 9am – 1am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date: October 18, 2019
Protest Petition Deadline: December 2, 2019
Roll Call Hearing Date: December 16, 2019
Protest Hearing Date: February 5, 2020

License No.: ABRA-113353
Licensee: Grand Cata Concept, LLC
Trade Name: Grand Cata at La Cosecha
License Class: Retailer's Class "B" Full Service Grocery
Address: 1280 4th Street, N.E.
Contact: Andrew Kline, Esq.: (202) 686-7600

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 December 16, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **February 5, 2020 at 1:30 p.m.**

NATURE OF OPERATION
A new Full-Service Grocery B.

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES
Sunday through Saturday 9am – 1am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 1, 2019
Protest Petition Deadline: December 16, 2019
Roll Call Hearing Date: December 30, 2019

License No.: ABRA-076693
Licensee: Grand Central, LLC
Trade Name: Grand Central
License Class: Retailer's Class "C" Restaurant
Address: 2447 18th Street NW
Contact: Sidon Yohannes, Esq.: (202) 686-7600

WARD 1 ANC 1C SMD 1C07

Notice is hereby given that this licensee has requested a Substantial Change to their 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 December 30, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF OPERATION
Licensee is applying to add Sports Wagering to their operations. Establishment will have two sports wagering machines and a cellphone application available to download on the premises.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (INSIDE PREMISES)
Sunday – Thursday 11am – 2am
Friday and Saturday 11am – 3am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (SIDEWALK CAFE)
Sunday – Thursday 11am – 11pm
Friday and Saturday 11am – 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 1, 2019
Protest Petition Deadline: December 16, 2019
Roll Call Hearing Date: December 30, 2019
Protest Hearing Date: February 12, 2020

License No.: ABRA-115376
Licensee: Machu Picchu, LLC
Trade Name: Miramar
License Class: Retailer's Class "C" Restaurant
Address: 1033 31st Street, N.W.
Contact: Taha Mohamed, Owner: (703) 599-4900

WARD 2 ANC 2E SMD 2E05

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 December 30, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **February 12, 2020 at 1:30 p.m.**

NATURE OF OPERATION
New Retailer's Class "C" Restaurant offering American and Mediterranean food. Applicant is applying for an Entertainment Endorsement with Dancing and Cover Charge indoors and outdoors. Applicant is also applying for a Summer Garden Endorsement with 18 seats. Total seating inside is 40 with a Total Occupancy Load of 68.

HOURS OF OPERATION, ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION, AND LIVE ENTERTAINMENT (INSIDE PREMISES AND FOR SUMMER GARDEN)
Sunday through Thursday 9am – 1:30am
Friday and Saturday 9am – 2:30am

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, OCTOBER 30, 2019
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 TWO

20127
ANC 2F

Application of David Boggs, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1(b) and (c), and pursuant to Subtitle X, Chapter 10, for area variances from the penthouse requirements of Subtitle C § 1500.4, the floor area ratio requirements of Subtitle F § 302.1, the lot occupancy requirements of Subtitle F § 304.1, and the nonconforming structure requirements of Subtitle C § 202.2, to construct a one-story addition, to expand the existing penthouse structure and to convert an existing apartment house to a flat in the RA-2 Zone at premises 1204 Q Street N.W. (Square 277S, Lot 7).

WARD FIVE

20132
ANC 5C

Appeal of Concerned Citizens of Woodridge, pursuant to 11 DCMR Subtitle Y § 302, from the decision made on June 4, 2019 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit B1900996, permitting the installation of a ground mounted, grid-tied solar array consisting of 5072 solar modules in the R-1-B Zone at premises 2800 Otis Street N.E. (Square 4302, Lot 828).

WARD TWO

20135
ANC 2E

Application of 3428 O Street LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for a use variance from the use permissions of Subtitle U § 201.1, to operate a prepared food shop on the first floor and basement of an existing mixed-use building in the R-20 Zone at premises 3428 O Street N.W. (Square 1228, Lot 76).

BZA PUBLIC HEARING NOTICE
OCTOBER 30, 2019
PAGE NO. 2

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
ለማነተፍ ዕርዳታ ያስፈልግዎታል?
የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም)
ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-
0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ 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
LORNA L. JOHN, MEMBER
CARLTON HART, VICE-CHAIRPERSON,
NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

BOARD OF ZONING ADJUSTMENT
(REVISED)PUBLIC HEARING NOTICE
WEDNESDAY, DECEMBER 11, 2019
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 EIGHT

19819A
ANC 8D

Application of Southern Hills LP, pursuant to 11 DCMR Subtitle Y § 704, for a modification of significance to demolish the existing seven building apartment complex and to revise the project by construction of six apartment houses with 349 residential units, and a new community service center in the RA-1 Zone at premises 4201, 4209, 4219, 4333, 4337, and 4347 4th Street S.E. and 304 Livingston Terrace S.E. (Square 6167, Lots 45, 46, 47, 48, 49, 50 and 51).

WARD SEVEN

20154
ANC 7D

Application of Doretta Ward, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 703.2 from the minimum vehicle parking requirements of Subtitle C § 701.5 and under Subtitle E §§ 5201 and 205.5 from the rear yard requirements of Subtitle E § 205.4, to construct a two-story rear addition to an existing attached principal dwelling unit in the RF-1 Zone at premises 438 20th Street N.E. (Square 4549, Lot 91).

WARD TWO

20157
ANC 2E

Application of Eugene Whong, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201.1 from the lot occupancy requirements of Subtitle D § 1204.1, to construct a two-story with a basement rear addition to an existing semi-detached principal dwelling unit in the R-20 Zone at premises 2710 Poplar Street, N.W. (Square 1260, Lot 817).

WARD EIGHT

20158
ANC 8E

Application of SE Washington Development Associates II LLP, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the new residential development requirements of Subtitle U § 421.1, to construct a new, three-story 56-68 unit apartment house in the RA-1 Zone at premises 3311-3329 14th Place S.E. (Square 5917, Lots 40-41).

WARD SEVEN

20160
ANC 7D

Application of Darcy Scott, pursuant to 11 DCMR Subtitle X, Chapter 10, for a use variance from the use requirements of Subtitle U § 201.1, to permit a two-story rear addition to an existing nonconforming semi-detached flat in the R-2 Zone at premises 4210 Brooks Street N.E. (Square 5088, Lot 23).

WARD TWO

20164
ANC 2C

Application of Ford's Theatre Society, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 1504.1 from the penthouse setback requirements of Subtitle C § 1502.1(b) and under Subtitle I § 205.5 from the rear yard requirements of Subtitle I § 205.1 to construct a two-story addition and a penthouse addition to the building at 512 10th Street N.W and to renovate and combine the two existing mixed-use buildings in the D-7 Zone at premises 512-514 10th Street N.W. (Square 347, Lots 21 and 825).

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
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ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-
0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

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

BOARD OF ZONING ADJUSTMENT
(REVISED)PUBLIC HEARING NOTICE
WEDNESDAY, DECEMBER 18, 2019
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 TWO

20159
ANC 2F

Application of JJ Brothers LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use requirements of Subtitle I § 303.1(b), to permit an eating and drinking establishment on the ground floor of an existing two-story building in the D-1-R Zone at premises 1133 11th Street N.W. (Square 341, Lot 821).

WARD SIX

20162
ANC 6B

Application of Sandip Mehta and Angela Mizeur, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the accessory building use requirements of Subtitle U § 301.1(e), and under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 504.1 to construct a two-story accessory structure to be used as a garage with a second-story dwelling unit in the RF-3 Zone at premises 400 3rd Street S.E. (Square 793, Lot 33).

WARD SIX

20163
ANC 6C

Application of 719 SIXTH ST LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 205.5 and 5201 from the rear addition requirements of Subtitle E § 205.4, to construct a three-story rear addition to an existing attached principal dwelling unit in the RF-1 Zone at premises 719 6th Street, N.E. (Square 859, Lot 121).

WARD ONE

20166
ANC 1C

Application of Destination Pet LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use requirements of Subtitle U § 513.1(l), to permit a veterinary office and veterinary boarding hospital in the MU-4 Zone at premises 2218-2220 18th Street, N.W. (Square 2553, Lot 78).

WARD SIX

20167
ANC 6B

Application of Neil King, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception from the use provisions of Subtitle U § 301.1(c)(2), and pursuant to Subtitle X, Chapter 10, for variances from the nonconforming structure requirements of Subtitle C § 202.2, and the lot occupancy requirements of Subtitle E § 304.1, to construct a second floor addition to an existing accessory building to accommodate an apartment in the RF-1 Zone at premises 233 ½ 9th Street S.E. (Square 923, Lot 51).

WARD SIX

20168
ANC 6C

Application of 50 F Street LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the Capitol Security Sub-Area requirements of Subtitle I § 605.6, to construct a penthouse and a rooftop terrace addition to an existing mixed-use building in the D-3 Zone at premises 50 F Street, N.W. (Square 628, Lots 896 and 898).

WARD FOUR

20169
ANC 4A

Application of Amanda Poppei, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the R-Use group requirements of Subtitle U § 203.1(g) to permit the continued use of the building as a child development center for 40 children in the R-1-A Zone at premises 7750 16th Street N.W. (Square 2745F, Lot 81).

WARD SEVEN

20170
ANC 7C

Application of District of Columbia General Services and District of Columbia Public Schools, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 1504 from the penthouse screening requirements of Subtitle C § 1500.6, to permit renovations to the existing public elementary school building in the R-2 Zone at premises 1120 50th Street N.E. (Square 5174, Lot 105).

WARD SIX

20171
ANC 6A

Application of Oliver Jacob, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle G § 409 and 1200 from the lot occupancy requirements of Subtitle G § 404.1, and under Subtitle G § 1201 from the rear yard requirements of Subtitle G § 405.2 to construct a second floor addition to an existing accessory building to accommodate an apartment in the MU-4 Zone at premises 803 Maryland Avenue N.E. (Square 915S, Lot 805).

WARD FOUR

20172
ANC 4C

Application of Sunvest LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 320.2, to construct a third-story addition and a two-story rear addition to an existing semi-detached principal dwelling unit, and to convert it into a three-unit apartment house in the RF-1 Zone at premises 4315 New Hampshire Avenue N.W. (Square 3244, Lot 34).

WARD FIVE

20174
ANC 5E

Application of HJB Properties, LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the minimum lot width and minimum lot area requirements of Subtitle E § 201.1, to convert the two existing tax lots into record lots, and to internally divide the building into two principal dwelling units, each on its own record lot, in the RF-1 Zone at premises 1416 3rd Street N.W. (Square 553W, Lots 829 and 830).

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 ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

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LORNA L. JOHN, MEMBER
CARLTON HART, VICE-CHAIRPERSON,
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A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, December 12, 2019 @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 19-20 (Georgetown University, on behalf of the property owner, President and Directors of Gonzaga College – Voluntary Design Review @ Square 622, Lot 93 [55 H Street, N.W.])

THIS CASE IS OF INTEREST TO ANC 6E

On September 27, 2019, Georgetown University, on behalf of the property owner, President and Directors of Gonzaga College (the "Applicant") filed an application (the "Application") requesting the Zoning Commission (the "Commission") grant voluntary design review ("VDR") approval pursuant to Subtitle X, Chapter 6, of Title I of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the "Zoning Regulations," to which all references are made unless otherwise specified) to develop the property located at Lot 93 in Square 622 with an address of 55 H Street, N.W., (the "Property").

The Property is located in the MU-9 zone and consists of approximately 33,040 square feet of land area. The Property is located on H Street, N.W. between North Capitol and 1st Streets, N.W. and is bounded by an office building to the east, an apartment building to the west, and Gonzaga College High School's athletic fields to the north. To the south of the Property, across H Street, is the Government Printing Office and surface parking associated with that use. A Walmart is located further to the west, at the intersection of 1st and H Streets, N.W. The Property is currently a surface parking lot.

The Application proposes to construct a student residence hall with approximately 158 residential units (containing approximately 476 beds), retail space, and student-serving amenity space (the "Building"). The Building will have a floor area ratio ("FAR") of approximately 6.49, and a building height of approximately 110 feet.

The Application seeks approval for:

- VDR flexibility from the following development standards of the MU-9 zone:
    - maximum height;
    - minimum side yard; and
    - minimum rear yard; and
- special exception relief from the required number of parking spaces for a multiple dwelling unit residential use, pursuant to Subtitle C §703.2.

This public hearing will be conducted in accordance with the contested case provisions of Subtitle Z, Chapter 4 of the Zoning Regulations (Title 11 of the DCMR, to which all references are made unless otherwise specified).

How to participate as a witness – oral presentation

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

The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

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

Pursuant to Subtitle Z § 408.4, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

How to participate as a witness – written statements

Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at https://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of Subtitle Z § 404.1.

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

Except for an affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the**

date set for the hearing, or 14 days prior to a scheduled public meeting if seeking advanced party status consideration, a Form 140 – Party Status Application, a copy of which may be downloaded from OZ's website at: https://app.dcoz.dc.gov/Help/Forms.html. This form may also be obtained from OZ at the address stated below.

"Great weight" to written report of ANC

Subtitle Z § 406.2 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Pursuant to Subtitle Z § 406.3, an ANC that wishes to participate in the hearing must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

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

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

Do you need assistance to participate? If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or Zelalem.Hill@dc.gov five days in advance of the meeting. These services will be provided free of charge.

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ለመሳተፍ ዕርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው

Z.C. NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 19-20
PAGE 3

OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF FINAL RULEMAKING

The Chief Procurement Officer of the District of Columbia ("CPO"), pursuant to the authority set forth in Sections 204 and 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-352.04 and 2-361.06 (2016 Repl.)) (Act), hereby gives notice of the adoption of amendments to Chapter 22 (Contractors), of Title 27 (Contracts and Procurement), of the District of Columbia Municipal Regulations (DCMR).

The rulemaking updates the regulations and implements the provisions in the Act and of the Procurement Integrity, Transparency, and Accountability Amendment Act of 2015, effective October 8, 2016 (D.C. Law 21-158; D.C. Official Code §§ 2-352.01, *et seq*. (2016 Repl.)) (PITAAA) that apply to contractor standards. The current Chapter 22 is outdated and inconsistent with the Act and PITAAA. These rules update causes for suspension and debarment, streamline the suspension and debarment process, and update the standards of contractor responsibility with those established under the Act and PITAAA.

A notice of proposed rulemaking was published in the *D.C. Register* on April 5, 2019 at 66 DCR 4310. No comments were received and no changes have been made to the text of the rules as proposed. On June 28, 2019, the CPO adopted these rules as final and the rulemaking will become effective upon publication of this notice in the *D.C. Register*.

Chapter 22, CONTRACTORS, of Title 27 DCMR, CONTRACTS AND PROCUREMENT, is amended as follows:

Section 2200, RESPONSIBLE PROSPECTIVE CONTRACTORS, is amended to read as follows:

2200 RESPONSIBLE PROSPECTIVE CONTRACTORS

2200.1 The contracting officer shall make purchases from and award contracts to responsible contractors only.

2200.2 For all contracts that exceed one hundred thousand dollars ($100,000), the contracting officer shall not make a purchase or an award unless the contracting officer has determined in writing that the prospective contractor is responsible in accordance with the provisions of this chapter.

2200.3 In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of non-responsibility.

2200.4 To be determined responsible, a prospective contractor shall meet all of the following requirements:

(a) Financial resources adequate to perform the contract or the ability to obtain those resources;

(b) Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all of its existing commercial and government contract commitments;

(c) A satisfactory performance record;

(d) A satisfactory record of integrity and business ethics;

(e) A satisfactory record of compliance with the law, including labor and civil rights laws and rules, the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-9; D.C. Official Code §§ 2-219.01 *et seq.*), the Small and Certified Business Enterprise Development and Assistance Act of 2005, as amended (D.C. Official Code §§ 2-218.01 *et seq.),* licensing, and tax laws;

(f) The necessary organization, experience, accounting, operational control, and technical skills, or the ability to obtain them;

(g) The necessary production equipment, construction equipment, technical equipment, and facilities, or the ability to obtain them;

(h) Has not exhibited a pattern of overcharging the District;

(i) Does not have an outstanding debt with the District or the federal government in a delinquent status of more than the greater of one thousand dollars ($1,000) or one percent (1%) of the contract value, up to twenty-five thousand dollars ($25,000); and

(j) Is qualified and eligible to receive an award under applicable laws and regulations.

2200.5 If the contracting officer determines that the price included in a prospective contractor's bid or offer is so low as to appear unreasonable or unrealistic, the contracting officer may determine the prospective contractor to be non-responsible.

2200.6 The contracting officer shall refer a prospective contractor determined to be non-responsible to the Director for consideration as to whether the prospective contractor should be proposed for debarment or suspension.

Section 2201, SPECIAL STANDARDS OF RESPONSIBILITY, is amended to read as follows:

2201 SPECIAL STANDARDS OF RESPONSIBILITY

2201.1 The contracting officer shall develop special standards of responsibility for a solicitation when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The contracting officer may seek the advice of appropriate specialists to develop special standards of responsibility.

2201.2 The contracting officer shall include any special standards of responsibility in the solicitation.

2201.3 The special standards of responsibility included in the solicitation shall apply to all bidders or offerors.

Section 2202, APPLICATION OF GENERAL STANDARDS, is amended to read as follows:

2202 APPLICATION OF GENERAL STANDARDS

2202.1 The contracting officer shall require, and the prospective contractor shall promptly provide, acceptable evidence that the prospective contractor has, or has the ability to obtain sufficient resources.

2202.2 Acceptable evidence of the prospective contractor's ability to obtain sufficient resources shall consist of a commitment or explicit arrangement that will be in existence prior to the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, personnel, or other resources.

2202.3 A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be non-responsible. The contracting officer may determine the contractor to be responsible if the circumstances of the prior deficiency were properly beyond the contractor's control or if the contractor has taken appropriate corrective action.

2202.4 An affiliated business shall be considered a separate entity in determining whether the business that is to perform the contract meets the applicable standards of responsibility. However, the contracting officer shall consider an affiliate's past performance and integrity when they may adversely affect the prospective contractor's responsibility. For the purpose of this subsection the term "affiliated" shall mean associated business concerns or individuals if, directly or indirectly, either one controls or can control the other, or a third party controls or can control both.

Section 2203, SUBCONTRACTOR RESPONSIBILITY, is amended to read as follows:

2203 SUBCONTRACTOR RESPONSIBILITY

2203.1 Except as provided in § 2212.8 of this chapter, a prospective contractor shall be accountable for determining the responsibility of prospective subcontractors. The prime contractor shall use the requirements and standards for responsibility set forth in this chapter.

2203.2 Because the determination of a prospective subcontractor's responsibility may affect the District's determination of the prospective contractor's responsibility, a prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

2203.3 When it is in the best interest of the District, the contracting officer may independently determine a prospective subcontractor's responsibility using the standards and requirements for responsibility set forth in this chapter.

Section 2204, OBTAINING INFORMATION FOR DETERMINATION OF RESPONSIBILITY, is amended to read as follows:

2204 OBTAINING INFORMATION FOR DETERMINATION OF RESPONSIBILITY

2204.1 Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to satisfy the contracting officer that a prospective contractor currently meets the applicable standards and requirements for responsibility set forth in this chapter.

2204.2 The prospective contractor shall promptly supply information requested by the contracting officer regarding its responsibility.

2204.3 If the prospective contractor fails to supply the information requested under § 2204.2 of this chapter, the contracting officer shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the contracting officer shall determine the prospective contractor to be non-responsible.

2204.4 The contracting officer shall use the following sources of information, as appropriate, to support determinations of responsibility or non-responsibility:

(a) The District's excluded parties list;

(b) The lists of debarred, suspended, and ineligible contractors maintained by the federal government;

(c) Past performance evaluations, other records regarding past performance, and experience data, including verifiable knowledge of District personnel;

(d) Information supplied by the prospective contractor, including information on bidder/offeror certifications, bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information;

(e) Financial information, including but not limited to Dun and Bradstreet reports;

(f) Pre-award survey reports; and

(g) Other sources, such as publications, suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations.

2204.5 A prospective contractor that submits a bid or proposal for any contract exceeding one hundred thousand dollars ($100,000) shall submit a certification indicating whether the prospective contractor has complied with the filing requirements of federal and District tax laws, and whether the prospective contractor has paid taxes due to the federal government and the District, or is in compliance with any payment agreement with the federal government, the D.C. Office of Tax and Revenue (OTR), and the D.C. Department of Employment Services (DOES).

2204.6 Before making an affirmative determination of responsibility for a contract exceeding one hundred thousand dollars ($100,000), the contracting officer shall obtain certifications from the OTR and the DOES that the prospective contractor has complied with the filing requirements of the District's tax laws, and that the prospective contractor has paid taxes due to the District or is in compliance with any payment agreement with the OTR and the DOES.

Section 2205, DETERMINATIONS AND DOCUMENTATION, is amended to read as follows:

2205 DETERMINATIONS AND DOCUMENTATION

2205.1 The contracting officer's execution of a contract shall constitute a determination that the prospective contractor is responsible with respect to that contract.

2205.2 When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, the contracting officer shall make and sign a written determination of non-responsibility, which shall state the basis for the determination.

Section 2206, PREAWARD SURVEYS, is amended to read as follows:

2206 PRE-AWARD SURVEYS

2206.1 The contracting officer may require a pre-award survey to assist in determining a prospective contractor's capability to perform a proposed contract.

2206.2 When a pre-award survey discloses unsatisfactory performance, the contracting officer shall determine the extent to which the prospective contractor plans, or has taken, corrective action.

2206.3 The contracting officer shall prepare a written pre-award survey report that documents the results of the pre-award survey and provides support for both the evaluation ratings and the determination of responsibility or non-responsibility.

2206.4 The pre-award survey report shall, as necessary, include information concerning the contractor's technical capabilities, financial capability, quality assurance procedures, and the quality of the contractor's accounting system.

Section 2210, DEBARMENT, SUSPENSION, AND INELIGIBILITY, is amended to read as follows:

2210 DEBARMENT, SUSPENSION, AND INELIGIBILITY

2210.1 The provisions of §§ 2210 through 2218 of this chapter shall govern the debarment and suspension of persons.

2210.2 Debarment and suspension shall be imposed only in the public interest for the District's protection and not for the purpose of punishment, and shall be imposed only for the causes set forth in Section 907(a)(1) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-359.07(a)(1)) (Act) or any other applicable statute, regulation, or final decision.

2210.3 A District official who makes a declaration of the ineligibility of a person to contract with the District or subcontract with a District contractor under authority of any District statute or regulation shall inform the Director in writing of the declaration. The notice to the Director shall cite the statutory basis for the declaration and the grounds for the declaration. The Director shall include notice of the ineligibility restrictions on the list issued under § 2211 of this chapter.

Section 2211, LIST OF DEBARRED, SUSPENDED, AND INELIGIBLE CONTRACTORS, is amended to read as follows:

2211 LIST OF DEBARRED, SUSPENDED, AND INELIGIBLE PERSONS

2211.1 The Director shall compile and maintain a current, consolidated list of all persons that have been debarred, suspended, or declared ineligible by the District. The list shall be known as the District's excluded parties list.

2211.2 Copies of the District's excluded parties list shall be distributed electronically to the District contracting officers and contract administrators through OCP's website.

2211.3 The District's excluded parties list shall include the following:

(a) The name and phone number of the OCP official responsible for maintaining the list;

(b) The names and addresses of all debarred or suspended persons;

(c) The name of the agency that instituted the debarment or suspension;

(d) The cause for the debarment or suspension; and

(e) The dates and terms of each suspension or debarment.

Section 2212, CONSEQUENCES OF DEBARMENT, SUSPENSION, OR INELIGIBILITY, is amended to read as follows:

2212 CONSEQUENCES OF DEBARMENT, SUSPENSION, OR INELIGIBILITY

2212.1 Unless the Director determines in writing that there is a compelling reason to do otherwise, agencies shall not solicit offers from, award contracts to, or consent to a District contractor's subcontract with a person listed on a current federal excluded parties list or the District's excluded parties list.

2212.2 A person listed on a current federal excluded parties list or the District's excluded parties list shall be excluded from receiving District contracts and subcontracts, under the conditions and for the period set forth in the applicable statute, regulation, or final decision, except as provided in Subsections 2212.1 and 2212.3 of this chapter.

2212.3 Bids or proposals received from a person named on a current federal excluded parties list or the District's excluded parties list shall be rejected unless the Director provides the ineligible person with a written statement before the bid or

proposal is submitted of the compelling reason(s) why the bid or proposal should be considered. The Director's determination shall be appended to the bid or proposal submitted.

2212.4 Immediately before the award of a contract, the contracting officer shall review the most recent versions of the federal and District excluded parties' lists to ensure that none of the persons being considered for award are named on the lists. If a person being considered for award appears on a federal or District excluded parties list, the contracting officer shall notify the person in writing that the person's bid or proposal shall be rejected unless the person provides a written statement from the Director in accordance with § 2212.3 of this chapter within fifteen (15) days of receipt of the written notification.

2212.5 If a contract is awarded to a debarred or suspended person, a notice of the award, along with the Director's determination, shall be published on the OCP's website within fifteen (15) days of the issuance of the award and published in the *District of Columbia Register*.

2212.6 The contracting officer may continue contracts or subcontracts in existence at the time a person is debarred, suspended, or declared ineligible, unless the Director determines in writing that the existing contracts or subcontracts should be terminated to protect the best interest of the District for any of the reasons set forth in § 903 of the Act, D.C. Official Code § 2-359.03.

2212.7 The contracting officer shall not exercise an option to renew or otherwise extend a current contract with a debarred or suspended person, or a contract which is being performed in any part by a debarred or suspended subcontractor, unless the Director approves the action in writing based on compelling reasons for exercise of the option or extension.

2212.8 For any subcontract subject to District consent, the contracting officer shall not consent to the award of a subcontract to any debarred or suspended person unless the Director approves the award, in writing, based on compelling reasons for the award.

2212.9 A person that has been debarred twice by the District shall be banned permanently from contracting with the District as set forth in § 907(k) of the Act.

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Section 2213, DEBARMENT, is amended to read as follows:

2213 DEBARMENT

2213.1 The Director may debar a person for any of the causes set forth in § 907(a)(1) of the Act or any other applicable statute, regulation, or final decision, unless the Director makes a finding in writing that it would be contrary to the best interest of

the District to do so or the present responsibility of the person is such that a debarment would not be warranted.

2213.2 Debarment shall constitute debarment of all divisions and other organizational elements of the person, and all commodities offered by the person, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities.

2213.3 Debarment shall constitute debarment of any affiliates of the person if the Director specifically names the affiliate in the finding and gives the affiliate written notice of the proposed debarment and an opportunity to respond in accordance with the provisions of this chapter.

2213.4 Debarment shall be for a period commensurate with the seriousness of the cause(s), but shall not exceed five (5) years except as provided in § 2212.9 of this chapter. If suspension precedes a debarment, the suspension period shall be included in the debarment period.

2213.5 The Director may reduce the period or extent of debarment, upon the person's request supported by documentation, for the following reasons:

(a) Newly discovered material evidence;

(b) Reversal of the conviction or judgment upon which debarment was based;

(c) Bona fide change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons that the Director deems appropriate.

2213.6 The Director may extend the debarment period for an additional period if the Director determines that the extension is necessary to protect the interest of the District. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment was based. The extension of debarment shall be subject to the procedures set forth in § 2214 of this chapter.

Section 2214, DEBARMENT PROCEEDINGS, is amended to read as follows:

2214 DEBARMENT PROCEEDINGS

2214.1 The Director shall initiate debarment proceedings by notifying the person and any specifically named affiliates by certified mail, return receipt requested, of the following:

(a) The reason(s) for the proposed debarment in sufficient detail to put the person on notice of the conduct or transaction(s) upon which the proposed debarment is based;

(b) The cause(s), as set forth in § 907(a) of the Act, D.C. Official Code § 2-359.07(a), or any other applicable statute, regulation, or final decision relied upon for the proposed debarment;

(c) That, within fifteen (15) calendar days after receipt of the notice, the person may submit, in person, in writing, or through a representative, information or written facts in opposition to the proposed debarment, and request an informal meeting in person or by telephone, to present information or facts in opposition;

(d) The District's procedures governing debarment decision-making;

(e) The effect of the proposed debarment;

(f) That a fact-finding proceeding may be conducted; and

(g) That the District will not solicit offers from, award contracts to renew, extend contracts with, or consent to subcontracts with the person pending a debarment decision.

2214.2 In response to the proposed debarment, the person may submit in writing information and facts in opposition or may schedule an in-person or telephonic meeting to present its information and facts in opposition. All matters that a person wants considered must be presented in writing. Unless otherwise approved by the Director, this response must be made within fifteen (15) calendar days of receiving notice of the proposed debarment.

2214.3 In actions based upon a conviction or civil judgment, or in which there is no genuine issue of material fact, the person may only present information or facts in opposition related to responsibility, mitigating circumstances, and remedial measures.

2214.4 The person, who may be represented or assisted by counsel, must address in writing all defenses, contested facts, admissions, remedial actions taken, and mitigating factors that it wishes the Director to consider.

2214.5 The Director shall review all materials presented and arguments made and determine whether or not the person has raised a genuine dispute regarding a fact material to the proposed debarment. A general denial of the allegations will not be sufficient to raise a genuine dispute regarding a material fact.

2214.6 In debarment actions not based upon a conviction or civil judgment, if the Director finds that the person's submission in opposition raises a genuine dispute regarding a fact material to the proposed debarment, the Director shall then conduct an informal fact-finding proceeding at which the person or its counsel may present evidence and may call and question witnesses. The fact-finding proceeding shall be transcribed unless the person and the Director agree otherwise. The person may purchase a copy of the transcript.

2214.7 The fact-finding proceeding is an informal evidentiary hearing and the rules of evidence and civil procedure shall not apply. Documentary evidence shall be taken into the record along with any testimony.

2214.8 In debarment actions not based upon a conviction or civil judgment, the cause(s) for debarment shall be established by a preponderance of the evidence. The Director shall base the debarment decision on the facts as found, together with all information in the administrative record.

2214.9 In debarment actions based upon a conviction or civil judgment, or in which there is no genuine issue of material fact, the Director shall make a decision on the basis of all the information in the administrative record, including any submission made by the person.

2214.10 If the person fails to provide a response to the notice within the fifteen (15) day period, or arrange an extension of time within that time, the Director shall make a final decision on the basis of the available information in the Director's possession.

2214.11 The Director shall issue a written decision within thirty (30) business days after receipt of all information and facts in opposition submitted by the person, unless the Director extends this period for good cause.

2214.12 If the Director decides to impose debarment, the person and any affiliates involved shall be given notice of the debarment action by certified mail, return receipt requested. The notice shall:

(a) State the relevant facts and the reasons for the action taken;

(b) Describe the present responsibility of the person;

(c) Describe how the debarment is in the best interest of the District;

(d) State the period of debarment, including effective dates;

(e) Include a statement advising that the debarment is effective for all District government agencies; and

(f) Inform the person of the right to appeal the decision to the Contract Appeals Board within sixty (60) days of receipt of the decision.

2214.13 All information considered by the Director will form the administrative record and a list of each document containing such information shall be included in the final decision.

2214.14 If debarment is not imposed, the Director shall promptly notify the person and any involved affiliates by certified mail, return receipt requested.

Section 2215, SUSPENSION, is amended to read as follows:

2215 SUSPENSION

2215.1 The Director shall suspend a person for any of the causes set forth in § 907(b)(1) of the Act, D.C. Official Code § 2-359.07(b)(1), unless the Director makes a finding in writing that it would be contrary to the best interest of the District to do so.

2215.2 The Director may suspend a person for any of the causes set forth in § 907(b)(2) of the Act, D.C. Official Code § 2-359.07(b)(2), if the Director makes a finding in writing that it would be in the best interest of the District to do unless the present responsibility of the person is such that a suspension would not be warranted.

2215.3 The Director may suspend a person for any other cause set forth in an applicable statute, regulation, or final decision.

2215.4 Suspension shall constitute suspension of all divisions and other organizational elements of the person, and all commodities offered by the person, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities.

2215.5 Suspension shall constitute suspension of any affiliates of the person if the Director specifically names the affiliate in the finding and gives the affiliate written notice of the proposed debarment and an opportunity to respond in accordance with the provisions of this chapter.

2215.6 Suspension shall be for a temporary period pending the completion of an investigation and any resulting judicial or administrative proceeding, unless terminated sooner by the Director. If judicial or administrative proceedings are not initiated within one (1) year after the date of the suspension notice, the suspension shall be terminated unless the Director determines that it is in the best interest of the District to extend the suspension, in which case it may be extended for not more than an additional six (6) months.

Section 2216, SUSPENSION PROCEEDINGS, is amended to read as follows:

2216 SUSPENSION PROCEEDINGS

2216.1 The Director shall initiate suspension proceedings by notifying the person and any specifically named affiliates by certified mail, return receipt requested, of the following:

(a) Reasons for the suspension in sufficient detail to put the person on notice of the conduct or transaction(s) upon which the suspension is based;

(b) Cause(s), as set forth in § 907(b) of the Act, D.C. Official Code § 2-359.07(b), or any other applicable statute, regulation or final decision relied upon for the suspension;

(c) That, within fifteen (15) calendar days after receipt of the notice, the person may submit, in person, in writing, or through a representative, information or written facts in opposition to the suspension, and request an informal meeting in person or by telephone, to present information or facts in opposition;

(d) The District's procedures governing suspension decision-making;

(e) The effect of the suspension; and

(f) That a fact-finding proceeding may be conducted; and

(g) That the District will not solicit offers from, award contracts to renew, extend contracts with, or consent to subcontracts with the person pending the completion of an investigation and any resulting judicial or administrative proceedings, unless sooner terminated by the Director.

2216.2 In response to the notice of suspension, the person may submit written information and facts in opposition or may schedule an informal in-person or telephonic meeting to present information and facts in opposition. All matters that a person wants considered must be presented in writing. Unless otherwise approved by the Director, this response must be made within fifteen (15) calendar days of receiving notice of suspension.

2216.3 The person, who may be represented or assisted by counsel, must address all defenses, contested facts, admissions, remedial actions taken, and mitigating factors that it wishes the Director to consider.

2416.4 The Director shall review all materials presented and determine whether or not the person has raised a genuine dispute regarding a material fact. A general denial of the allegations will not be sufficient to raise a genuine dispute over facts.

2216.5 In suspension actions based on an indictment in which the person's submission does not raise any genuine issue of material fact, or in which additional proceedings to determine disputed material facts have been denied on the basis of the advice of the prosecuting authority, the Director's decision shall be based on all the information in the administrative record, including any submission made by the person.

2216.6 In suspension actions not based upon an indictment, if the Director finds that the person's submission in opposition raises a genuine dispute over a fact material to the suspension, the Director shall then conduct an informal fact-finding proceeding at which the person or its counsel may present evidence and may call and question witnesses. The fact-finding proceeding shall be transcribed unless the person and the Director agree otherwise. The person may purchase a copy of the transcript.

2216.7 The fact-finding proceeding is an informal evidentiary hearing and the Rules of Evidence and Civil Procedure shall not apply. Documentary evidence will be taken into the record along with any testimony.

2216.8 Upon the conclusion of the fact-finding proceeding, the Director shall review the administrative record, prepare written findings of fact, and issue a written decision based on the facts as found.

2216.9 If the person fails to provide a response to the notice within the fifteen (15) day period, or arrange an extension of time, the Director shall make a final decision on the basis of the available information in the Director's possession.

2216.10 The Director shall issue a written decision within thirty (30) business days after receipt of all information and facts in opposition submitted by the person, unless the Director extends this period for good cause.

2216.11 The Director's decision shall maintain, modify, or terminate the suspension. The Director shall provide notice of his decision to the person and any affiliates involved by certified mail, return receipt requested. The notice shall:

(a) State the relevant facts and the reasons for the action taken;

(b) Describe the present responsibility of the person;

(c) Describe how the maintenance, modification, or termination of suspension is in the best interest of the District;

(d) State the period of suspension, including effective dates; and

(e) Include a statement advising that the suspension is effective for all District government agencies; and

(f) Inform the person of the right to appeal the decision to the Contract Appeals Board within sixty (60) days of receipt of the decision.

2216.12 All information considered by the Director shall form the administrative record and a list of each document containing such information shall be included in the final decision.

2216.13 If judicial or administrative proceedings are not initiated within one (1) year after the date of the suspension notice, the suspension shall be terminated unless the Director determines that it is in the best interest of the District to extend the suspension, in which case it may be extended for not more than an additional six (6) months. In no event may a suspension extend beyond eighteen (18) months, unless judicial or administrative proceedings have been initiated within that period.

Section 2218, MAINTENANCE OF DEBARMENT AND SUSPENSION RECORDS, is amended to read as follows:

2218 MAINTENANCE OF DEBARMENT AND SUSPENSION RECORDS

2218.1 The Director shall keep and maintain a case docket of current debarment and suspension proceedings under the Director's jurisdiction and copies of the Director's decisions and final orders.

Section 2219, DEBARMENT PROCEEDINGS FOR UNSATISFACTORY PERFORMANCE, is deleted in its entirety.

Section 2220, ORGANIZATIONAL CONFLICTS OF INTEREST, is amended to read as follows:

2220 ORGANIZATIONAL CONFLICTS OF INTEREST

2220.1 The contracting officer shall analyze each planned procurement in order to identify and evaluate potential organizational conflicts of interest early in the procurement process and avoid, neutralize, or mitigate potential conflicts prior to contract award.

2220.2 A contractor that provides systems engineering and technical direction for a system, but does not have overall contractual responsibility for its development, integration, assembly and checkout, or production, shall not be awarded any of the following:

(a) A contract to supply the system or any of its major components;

(b) A subcontract to supply the system or any of its major components; or

(c) A consulting contract with a supplier of the system or any of its major components.

2220.3 If a contractor prepares and furnishes complete specifications covering non-developmental items to be used in a competitive procurement, that contractor shall not be allowed to furnish those items, either as a prime contractor or as a subcontractor, for a reasonable period of time to include at least the duration of the initial production contract. This subsection shall not apply to the following:

(a) Contractors that furnish, at District request, specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product; or

(b) Contractors acting as industry representatives that assist District agencies prepare, refine, or coordinate specifications, regardless of source, when the assistance is supervised and controlled by District representatives.

2220.4 If a contractor prepares, or assists in preparing, a work statement to be used in competitively procuring a system or services, or provides material leading directly, predictably, and without delay to this type of work statement, that contractor shall not supply the system or services unless one (1) or more of the following apply:

(a) The contractor is the sole source;

(b) The contractor has participated in the developmental and design work; or

(c) More than one (1) contractor has been involved in preparing the work statement.

2220.5 A contract involving technical evaluation of other contractors’ offers, products, or consulting services shall not be awarded to a contractor that would evaluate or advise the District concerning its own products or activities, or those of a competitor, without proper safeguards to ensure objectivity and protect the District’s interest.

2220.6 When a contractor requires proprietary information from others to perform a District contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and encourage companies to provide it when necessary for contract performance. They are not intended to protect information that is:

(a) Furnished voluntarily without limitations on its use; or

(b) Available to the District or contractor from other sources without restriction.

2220.7 A contractor that gains access to proprietary or confidential information of its competitors or other companies, firms, individuals, or District contractors in performing advisory and assistance services for the District shall agree with its competitors or other companies, firms, individuals, or District contractors to protect all proprietary or confidential information from unauthorized use or disclosure for as long as it remains proprietary or confidential and refrain from using the information for any purpose other than that for which it was furnished.

2220.8 Any solicitation that may involve a significant potential organizational conflict of interest shall contain a provision which describes the following:

(a) The nature of the potential conflict as seen by the contracting officer;

(b) The nature of the proposed restraint upon future contractor activities; and

(c) Depending on the nature of the procurement, whether the terms of any proposed conflicts clause and the application of § 2220 of this chapter to the contract are subject to negotiation.

2220.9 If, as a condition of award, a contractor's eligibility for future prime contract or subcontract awards would be restricted, or a contractor would have to agree to some other restraint, the solicitation shall contain a conflicts clause that specifies both the nature and duration of the proposed restraint. The contracting officer shall include the conflicts clause in the contract.

2220.10 The Director may waive any requirement of this section if he determines that the application of the rule of procedure in a particular situation would not be in the best interest of the District. Each waiver shall be in writing, and describe the nature of the conflict and the justification for the waiver.

Section 2221, CONFLICTING CONTRACTOR INVOLVEMENT, is deleted in its entirety.

Section 2222, PROCEDURES FOR AVOIDING CONFLICTS, is deleted in its entirety.

Section 2225, CONTRACTOR TEAM ARRANGEMENTS, is amended to read as follows:

2225 CONTRACTOR TEAM ARRANGEMENTS

2225.1 The District may recognize the integrity and validity of contractor team arrangements when those arrangements are identified and company relationships are fully disclosed in an offer or, for an arrangement entered into after submission

of an offer, before the arrangement becomes effective. The District shall not require or suggest the dissolution of contractor team arrangements unless those arrangements are in violation of any law or regulation, or are not in the best interest of the District.

2225.2 Nothing in this section shall authorize any contractor team arrangement in violation of antitrust statutes or limit the District's rights to do any of the following:

(a) Require consent to subcontract;

(b) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor;

(c) Provide to the prime contractor data rights owned or controlled by the District;

(d) Pursue policies on competitive contracting, subcontracting, and component breakout after initial production, or at any other time; or

(e) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

Section 2299, DEFINITIONS, is amended to read as follows:

2299 DEFINITIONS

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

Contractor team arrangement – An arrangement under which two (2) or more persons form a partnership or joint venture to act as a potential prime contractor, or an arrangement under which a potential prime contractor agrees with one (1) or more other persons to have those persons act as the contractor's subcontractor(s) under a specified District contract or procurement program.

Conviction – A judgment of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a judgment entered upon a plea of nolo contendere.

Debarment – Action taken by the Director to exclude a person from District contracting and subcontracting for a specified period.

Director – The Director of the Office of Contracting and Procurement (OCP) or the District of Columbia Chief Procurement Officer (CPO).

Indictment – An accusation in writing found and presented by a grand jury to the court charging that a named person has committed a criminal offense, including any information or other filing by a competent prosecuting authority charging a criminal offense.

Ineligible – Excluded from District contracting or subcontracting under authority of federal statute or regulation applicable to the District (such as the Davis-Bacon Act, 40 USC §§ 3141–3148, the Service Contract Act, 41 USC §§ 6702–6707, or the Equal Employment Opportunity Act of 1972, 5 USC §§ 5108, 5314 *et seq*., and 42 USC § 2000e), or excluded under authority of a District statute or regulation other than the Act or this title.

Judicial or administrative proceedings – Any civil judicial or administrative proceeding to which the District or federal government is a party or any criminal proceeding, including appeals from these proceedings.

Organizational conflict of interest – When the nature of the work to be performed under a proposed District contract might, without some restraint on future activities, result in an unfair competitive advantage to a contractor or impair a contractor's objectivity in performing contract work.

Person – Any business, individual, corporation, partnership, association, or legal entity, however organized.

Pre-award survey – A detailed review (sometimes on-site) of a prospective contractor to ascertain information sufficient to make a determination regarding responsibility.

Preponderance of the evidence – Proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Suspension – An immediate but temporary action taken by the Director which renders a person ineligible to receive new contracts, renewed contracts, extended contracts, or subcontracts pending the outcome of judicial or administrative proceedings that could give rise to a debarment action.

Systems engineering – Developmental, analytical, or other non-production activities, including determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test results, or supervising design.

Technical direction – A combination of activities including developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the final action to amend Chapter 67 (Physical Therapy) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to require physical therapists seeking to renew, reactivate, or reinstate the license to complete continuing education in public health priorities as determined and amended from time to time by the Director.

The rulemaking was published as a proposed rulemaking in the *D.C. Register* on June 14, 2019 at 66 DCR 7179. No comments were received and there has been no change to the rule as proposed. This rule was adopted as final on August 21, 2019 and will be effective upon publication in the *D.C. Register*.

Chapter 67, PHYSICAL THERAPY, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 6706, CONTINUING EDUCATION REQUIREMENTS, is amended as follows:

Subsection 6706.4 is amended to read as follows:

6706.4 To qualify for the renewal of a license, an applicant shall have completed forty (40) hours of approved continuing education during the two (2) years' period preceding the date the license expires, which shall include:

(a) No more than twenty (20) hours of approved continuing education credits earned through internet courses;

(b) Ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate; and

(c) Two (2) hours of LGBTQ continuing education.

Subsection 6706.5 is amended to read as follows:

6706.5 The Board may periodically conduct a random audit to determine licensees' compliance with the continuing education. A licensee who is selected to participate in the Board's continuing education audit shall, within thirty (30) days

after receiving notice of the selection, submit proof pursuant to § 6706.9 of having completed the required approved continuing education credits during the two (2)-year period immediately preceding the date the license expires.

Subsection 6706.6 is amended to read as follows:

6706.6 To qualify for the reactivation of a license, a person in inactive status, within the meaning of § 511 of the Act (D.C. Official Code § 3-1205.11(2016 Repl.)) who does not possess a valid, active license to practice physical therapy in any jurisdiction of the United States shall submit proof pursuant to § 6706.9 of having completed the following within the two (2) year period preceding the date of the application for reactivation of that applicant's license:

(a) Twenty (20) hours of approved continuing education meeting the requirement of § 6707.1 for each year that the license remains inactive up to a maximum of one hundred (100) hours, provided further that ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate; and

(b) Two (2) hours of LGBTQ continuing education.

Subsection 6706.8 is amended to read as follows:

6706.8 To qualify for the reinstatement of a license, an applicant shall submit proof pursuant to § 6706.9 of having completed, no more than two (2) years before the date of the reinstatement application:

(a) Twenty (20) hours of approved continuing education meeting the requirement of § 6707.1 for each year that the license was not valid, provided further that ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate; and

(b) Two (2) hours of LGTBQ continuing education.

Section 6799, DEFINITIONS, is amended as follows:

Subsection 6799.1 is amended as follows:

The following definition is added before the definition of "Intramuscular manual therapy":

Director – The Director of the Department of Health, or the Director's designee.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

RM16-2019-01, IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO THE RULES GOVERNING POLE ATTACHMENTS IN THE DISTRICT,

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Sections 34-802 (2012 Repl.), 2-505 (2016 Repl.), 34-1102 (2012 Repl.), and 34-1253.03 (2012 Repl.) of the District of Columbia Code, of its adoption of amendments to Chapter 16 (Pole Attachment Regulation for Cable Television) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR).

2. The Commission proposes to repeal Chapter 16, governing Pole Attachment disputes between public utilities and Cable Operators, to make the procedures in Chapter 16 consistent with both D.C. Official Code §§ 34-1102 and 34-1253.03, which apply to Cable Operators and other entities. The replacement rules govern disputes between public utilities and other entities over the use of public utility facilities and disputes between public utilities and Cable Operators for the use of public utility facilities and rights-of-way.

3. A first Notice of Proposed Rulemaking (NOPR) to repeal and replace Chapter 16 was published on February 1, 2019.[1] A Second NOPR was published on April 26, 2019,[2] a Third NOPR was published on June 7, 2019,[3] and a Fourth NOPR was published on August 30, 2019.[4]

4. No comments on the Fourth NOPR were filed. The Commission approved the repeal and replacement of Chapter 16 as proposed in a vote at the October 23, 2019 open meeting, with the amendments becoming effective upon publication in the *D.C. Register.*

Chapter 16, POLE ATTACHMENT PROVISIONS FOR CABLE TELEVISION, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

The title of Chapter 16 is renamed to read as follows:

CHAPTER 16 USE OF PUBLIC UTILITY FACILITIES

Sections 1600-1608, 1613, and 1699 are repealed in their entirety.

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[1] 66 *DCR* 1505-1507 (February 1, 2019).

[2] 66 *DCR* 5437-5439 (April 26, 2019).

[3] 66 *DCR* 6972-6975 (June 7, 2019).

[4] 66 *DCR* 11717-11722 (August 30, 2019).

A new Chapter 16 is proposed to read as follows:

CHAPTER 16 USE OF PUBLIC UTILITY FACILITIES

Secs.
1600 PURPOSE
1601 APPLICATIONS
1602 NOTICE OF REMOVAL AND PETITION FOR TEMPORARY STAY
1603 RULES GOVERNING POLE ATTACHMENT DISPUTES BETWEEN PUBLIC UTILITIES AND CABLE OPERATORS
1604 REMEDIES
1605 WAIVER OF RULES
1699 DEFINITIONS

1600 PURPOSE

1600.1 This chapter shall implement the Commission's regulatory authority over access to a public utility's Facilities by another public utility or by any person, firm, copartnership, association, or corporation interested in the use of a public utility's Facilities. This chapter shall also implement the Commission's regulatory authority over access to a public utility's poles, conduits, and rights-of-way by Cable Operators. This chapter also provides procedures for the processing of Applications regarding the use of such Facilities, and prompt processing of Complaints regarding the use of utility poles, conduits, or rights-of-way by Cable Operators, including the rates, terms, and conditions of such use, or petitions for temporary stay pertaining to removal of equipment or changes in rates.

1600.2 The Commission shall ensure that all Pole Attachment rates, terms and conditions prescribed in accordance with this chapter are just and reasonable, and shall regulate the matters described in this chapter in accordance with District of Columbia law, federal law, and to the extent applicable, Federal Communications Commission rules and regulations.

1601 APPLICATIONS

1601.1 Private negotiation of agreements regarding the use of a public utility's Facilities by another public utility or by any person, firm, copartnership, association, or corporation interested in the use of a public utility's Facilities is encouraged by the Commission. In case of failure to agree upon the use of a public utility's Facilities by another public utility or by any person, firm, copartnership, association, or corporation interested in the use of a public utility's Facilities, or the conditions or compensation for such use, any public utility or any person, firm, copartnership, association, or corporation may file an Application with the Commission.

1601.2 Applications filed under this chapter shall be filed in accordance with and shall be governed by the procedures set forth in Chapter 1 (Public Service Commission Rules of Practice and Procedure) of this title, except as otherwise provided by this chapter.

1601.3 The Application shall specify the cause of the dispute. The Application shall be accompanied by a copy of the agreement for the use of the Facilities, if any, between the Applicant and the public utility.

1601.4 The Commission shall investigate the Application. If the Commission determines that public convenience and necessity require such use of the Facilities and that it would not result in irreparable injury to the owners or other user of the Facilities nor in any substantial detriment to the service to be rendered by the owners or other users of the Facilities, the Commission shall direct that use of the Facilities be permitted and prescribe the conditions and compensation for such joint use. This provision does not alter a Cable Operator's rights to access a utility's poles, conduits or rights-of-way upon just and reasonable rates, terms and conditions.

1601.5 With respect to any Application, the Commission shall take final action within three hundred and sixty (360) days after the filing of the Application.

1602 NOTICE OF REMOVAL AND PETITION FOR TEMPORARY STAY

1602.1 A public utility shall provide any person, firm, copartnership, association, or corporation using a public utility's Facilities no less than sixty (60) days written notice prior to the following:

(a) Removal of any person, firm, copartnership, association, or corporation's equipment or termination of services to any person, firm, copartnership, association, or corporation's equipment located on the public utility Facilities; or

(b) Changes in rates, terms, or conditions for the use of public utility Facilities.

1602.2 Any person, firm, copartnership, association, or corporation affected by the notice in Subsection 1602.1 may file a petition for temporary stay of the action in the notice within fifteen (15) days of the notice.

1602.3 A petition for temporary stay shall be governed by the procedures set forth in Chapter 1 of this title, except as otherwise provided by this chapter.

1603 RULES GOVERNING POLE ATTACHMENT DISPUTES BETWEEN PUBLIC UTILITIES AND CABLE OPERATORS

1603.1 Cable Operators may also file Complaints or petitions for temporary stay regarding the use of existing utility poles, ducts, conduits or rights-of-way located in the District of Columbia. Petitions for temporary stay shall be governed by the provisions of D.C. Official Code § 34-1253.03, and Sections 1601 and 1602. Complaints shall be filed in accordance with Chapter 1 of this title as such procedures pertain to processing of formal complaints, except as otherwise provided by this chapter.

1603.2 In a case where it is claimed that either a rate is unjust or unreasonable, or a term or condition is unjust or unreasonable and examination of the term or condition requires review of the associated rate, the Complaint shall provide data and information in support of the claim. The data and information shall include, where applicable, the following information:

(a) The depreciated installed cost of poles in the District of Columbia;

(b) The total number of poles owned and controlled or used by the public utility;

(c) The total number of poles which are the subject of the Complaint;

(d) The number of poles included in paragraph (c) of this section that are owned by the public utility and that are leased to other users by the public utility, and the annual share of pole costs allocated to the users (including the Complainant), together with the methodology for such allocation; and

(e) The annual carrying charges for the poles owned and controlled or used by the public utility.

1603.3 With respect to the data required by § 1603.2, this data and information shall be based upon the cost methodology, prescribed by the Commission. Data shall be derived from Form M, ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies (identify source). Calculations made in connection with these figures shall be provided to the Applicant.

1603.4 Where the attachments to the data required by § 1603.2 involve ducts, conduits, or rights-of-way, in whole or in part, appropriate and equivalent data and information shall be filed.

1603.5 If any of the information required in § 1603.2 is not provided to the Cable Operator by the public utility upon reasonable request, the Cable Operator shall include a statement indicating the steps taken to obtain the information from the public utility, including the dates of all requests. No Complaint filed by a Cable

Operator shall be dismissed where the public utility has failed to provide the information in § 1603.2 after a reasonable request.

1603.6 The Complaint shall include a brief summary of all steps taken to resolve the pole attachment dispute prior to filing.

1603.7 In its consideration of the Complaint, answer, and other filings, the Commission may take notice of any information contained in publicly available documents made by the parties to the dispute and may accept, subject to rebuttal, studies that have been conducted.

1603.8 In making any determination under this Section, the Commission shall consider the interests of both cable service subscribers and public utility consumers.

1603.9 With respect to any Complaint, the Commission shall take final action within three hundred and sixty (360) days after the filing of the Complaint.

1604 REMEDIES

1604.1 If the Commission determines that the rate, term, or condition complained of is not just and reasonable, it may prescribe a just and reasonable rate, term, or condition and may take any of the following actions:

(a) Terminate the unjust and unreasonable rate, term, or condition in the Pole Attachment agreement; or

(b) Direct the substitution of in the Pole Attachment agreement the just and reasonable rate, term, or condition established by the Commission.

1605 WAIVER OF RULES

1605.1 The Commission may grant exceptions to this chapter, for good cause shown, to promote justice or to prevent hardship.

1699 DEFINITIONS

1699.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Applicant – a public utility or any person, firm, copartnership, association, or corporation who files an Application.

Application – a filing by either a public utility or any person, firm, copartnership, association, or corporation interested in the use of a public utility's Facilities.

Cable Operator – a person or group of persons: (A) who provides cable service over a cable system or over an open video system and directly or through one or more affiliates owns a significant interest in such cable system or open video system; or (B) who controls or is responsible for, through any arrangement, the management and operation of a cable system or open video system.

Commission – the Public Service Commission of the District of Columbia.

Complaint – a filing by either a Cable Operator or a public utility alleging that it has been denied access to a public utility's poles, ducts, conduits or rights-of-way, or that a rate, term, or condition.

Facilities – tracks, conduits, subways, poles, wires, switchboards, exchanges, works, or other equipment.

Pole Attachment – any attachment by a Cable Operator to a pole, duct, conduit, or right-of-way owned or controlled by a public utility.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF SIXTH EMERGENCY RULEMAKING

The Director of the District of Columbia ("District") Department of Human Services ("Department"), pursuant to the authority set forth in Sections 31 and 31c of the Homeless Services Reform Act of 2005 ("HSRA" or "Act"), effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-756.02 and 4-756.05 (2019 Repl.)), and Mayor's Order 2006-20, dated February 13, 2006, gives notice of the Department's adoption, on an emergency basis, of the following new Chapter 79 (Flexible Rent Subsidy Pilot Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations ("DCMR"), to become effective immediately.

The Flexible Rent Subsidy Pilot Program, which subsequently shall be referred to as the DC Flex Program (and "Program" throughout this rule), is a four-year pilot program that provides financial assistance to households to support their ability to pay monthly rental expenses, especially during periods of income volatility, in order to promote long-term housing stability. Training on budgeting and money management will be offered to households enrolled in the Program. The purpose of the new chapter is to establish rules to administer the Program.

These rules were first published as emergency and proposed in the *D.C. Register* on April 27, 2018, at 65 DCR 4663, were adopted on January 24, 2018, and became effective on that date. Emergency rules were subsequently published on June 1, 2018, at 65 DCR 6057, December 28, 2018, at 65 DCR 14135, March 8, 2019, at 66 DCR 2779, and July 19, 2019, at 66 DCR 8389.

This rulemaking reflects changes to Program requirements in response to 1) public comments received after publication of the original proposed rulemaking and 2) the Department's experience with the initial stages of implementing the Program under emergency rulemaking. The objectives and policy goals of the Program remain unchanged. Emergency rulemaking action, pursuant to section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), is necessary to allow the Department to continue to operate the Program as the Department reviews comments in response to the proposed rulemaking, and to finalize the proposed rules. Therefore, taking emergency action under these circumstances will promote the immediate preservation of the health, safety, and welfare of District residents who are at risk of experiencing homelessness by permitting the Department to continue to support their efforts to maintain permanent housing.

DHS adopted the emergency rules on August 29, 2019, and they became effective on that date. The emergency rules will remain in effect for one hundred and twenty (120) days from the adoption date, until December 27, 2019, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, the Department shall publish the effective date with the Notice of Final Rulemaking.

Add the following new Chapter 79, FLEXIBLE RENT SUBSIDY PILOT PROGRAM, to Title 29 DCMR, PUBLIC WELFARE, to read as follows:

CHAPTER 79 FLEXIBLE RENT SUBSIDY PILOT PROGRAM

7900 SCOPE

7900.1 The purpose of the Flexible Rent Subsidy Pilot Program, which subsequently shall be referred to as the DC Flex Program (and "Program" throughout this rule), is to support households that are at risk of experiencing homelessness to achieve stability in permanent housing. The Program provides financial assistance to each enrolled head of household in the instances where there is a gap between the total monthly rent expenses and the household's funds available for rent. The financial assistance is payable only to the households, with the exception noted in § 7905.11(b).

7900.2 The Department shall be responsible for the implementation of this chapter, which shall apply to all financial assistance provided through the Department pursuant to the Program.

7900.3 The Program shall operate for four years, beginning in Fiscal Year 2018.

7900.4 One person per household is eligible to enroll his or her household in the Program. This person shall be considered the head of household.

7900.5 The provisions of this chapter describe eligibility criteria; the application process; assistance determination; description of assistance provided and how it is administered; recertification requirements; and appeal procedures for the Program.

7900.6 Nothing in these rules shall be interpreted to mean that Program assistance is an entitlement. This Program shall be subject to annual appropriations and the availability of funds.

7900.7 The Department may execute contracts, grants, and other agreements as necessary to carry out the Program.

7901 ELIGIBILITY CRITERIA

7901.1 Only one person who is twenty-one (21) years old or older at the time of application per household is eligible to enroll his or her household in the Program. This person shall be considered the head of household.

7901.2 A household is composed of individuals who live in the same physical housing unit as the applying head of household, and shall include:

(a) Persons related by blood or legal adoption with legal responsibility for minor children in the household;

(b) Persons related by marriage or domestic partnership (as defined by Section 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(4)), including stepchildren and unmarried parents of a common child who live together;

(c) Persons with a legal responsibility for an unrelated minor child or an unrelated adult with a disability; and

(d) Any person not included by § 7901.2(a)-(c), regardless of blood relationship, age, or marriage, whose history and statements reasonably demonstrate that the individuals intend to remain together in the same household and whose income contributes to total household expenses.

7901.3 An otherwise eligible person temporarily away from the housing unit due to employment, school, hospitalization, incarceration, legal proceedings or vacation shall be considered to be living in the household. A minor child who is away at school is considered to be living in the household if he or she returns to the housing unit on occasional weekends, holidays, school breaks, or during summer vacations.

7901.4 To establish initial eligibility for the Program, a household must:

(a) Reside in the District of Columbia, as defined by Section 2(32) of the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-751.01(32)), at the time of application;

(b) Demonstrate risk of homelessness as evidenced by:

(1) Previous application for at least one emergency or temporary government-funded housing or rental assistance program administered by the District, including the Emergency Rental Assistance Program, the Homelessness Prevention Program, or the Family Re-Housing and Stabilization Program, within the last 48 months; and

(2) Having a total annual income less than or equal to thirty percent (30%) of the Median Family Income for the District, which is a periodic calculation provided by the United States Department of Housing and Urban Development; and

(c) Be headed by a person that is twenty-one (21) years old or older at the time of application, and who meets the following requirements:

(1) Has physical custody of one or more minor children;

(2) Is currently employed or has recent history of employment; and

(3) Is the lease holder for a rental unit.

7901.5 The applicant may be enrolled in a government-funded rental assistance program administered by the District at the time of application. However, if selected for the Program, no household member may be enrolled in both the Program and another District or federal government-funded rental assistance program at the same time. Enrollment in the Program shall not preclude receipt of shelter or rental assistance after participation in the Program has ended.

7902 HOUSEHOLD OUTREACH

7902.1 The Department will conduct outreach to households with an estimated high likelihood of meeting the eligibility criteria listed in § 7901, to inform these households about the Program and to determine potentially eligible households' interest in Program enrollment.

7902.2 Households that receive information about the Program shall be identified by the Department through administrative data contained in applications completed by households seeking or enrolled in government-funded housing or government-funded emergency rental assistance programs administered by the District.

7902.3 The Department will conduct outreach via the US Postal Service, telephone, email, SMS text messages, or other communication means determined by the Department.

7902.4 Outreach communications will invite households interested in Program enrollment to submit an application as described in § 7903 to the Department via a web-based portal, US Postal Service, or in person at a physical site determined by the Department.

7902.5 Outreach communication shall contain or provide a hyperlink to a description of the Program, the application and enrollment process, responsibilities of the Department and the Provider used to manage the Program, and Program participation requirements, including each applicant's involvement in budget and financial management activities.

7903 APPLICATION AND SELECTION PROCESS

7903.1 Each household interested in enrolling in the Program shall complete an application form provided by the Department that is signed by the head of household. An authorized representative may apply on behalf of the applying household if the applying head of household provides a written and signed statement stating why he or she cannot personally complete the form and the name and address of the person authorized to act on his or her behalf.

7903.2 If the applicant has a disability or the authorized representative of the applicant with a disability requests assistance to complete the application, the Department shall assist such applicant or authorized representative with the application process to ensure that the applicant has an equal opportunity to submit an application.

7903.3 The Director of the Department will determine the number of applications that will be accepted for the Program, which is contingent on available funding. If at any point the Department receives additional funding for the program, the Department may reopen the application process at that time for new applications.

7903.4 Household enrollment shall follow a two-step process. The first step shall require the applying person to complete and submit a web-based or paper application to the Department as notification of his or her household's enrollment interest and self-reported eligibility in order to be selected. The second step shall require selected households to submit documentation to the Department that enables the Department or its designee to verify information on the household's application and Program eligibility criteria included in § 7901 of this chapter.

7903.5 The application will include questions that require the applicant to attest to the Program eligibility criteria listed in § 7901, and may also request the applicant to provide the following:

(a) Identifying information;

(b) Contact information;

(c) Household composition;

(d) Current income;

(e) Current monthly rent expense;

(f) Address of current rental unit;

(g) Consent to release information; and

(h) Any additional information deemed necessary by the Department.

7903.6 Due to limited Program availability during the pilot period, the Department will administer one or more assignment lotteries to determine which applying households are offered one of the available Program slots using the method described in § 7903.5,§ 7903.7, and §7903.8.

7903.7 The results of the Program's pilot period will be evaluated to understand its effectiveness in supporting households' long term housing stability. To increase the probability that the Program will be successful if expanded to enroll more households, the lottery will be structured so that the characteristics identified on the applications of the group of households offered a Program slot are similar to the characteristics identified on the application of all households that applied for the Program.

7903.8 After the lottery is completed, the Department will offer available Program slots to households selected by the lottery. The Department will notify selected households via the US Postal Service, telephone, email or another communication mode determined by the Department. These Program slots are conditional, and are only official after the household responds to the Department's notice of the conditional offer and successfully completes the Program eligibility process described in § 7904. If a household fails to respond within the given timeframe, or after verification the household does not meet eligibility requirements for the Program, an additional household will be selected based on the method described in § 7903.10, until all slots have been filled.

7903.9 Each household selected for the Program will have fifteen (15) calendar days from the date of notice to respond to the Department via telephone, email or another communication mode determined by the Department. Each household's response to the Department shall convey whether the household:

(a) Accepts the conditional Program slot offer and intends to complete the Program eligibility process; or

(b) Declines the conditional Program slot offer.

7903.10 Any household that declines the offer for the Program slot, fails to provide a response to the Department within fifteen (15) calendar days of Program selection notice, or fails to meet the Program eligibility process described in § 7904, will lose their spot on the lottery result list, and the next household on the list will be offered the slot, until all slots have been filled.

7903.11 Any household that submits an application for Program enrollment will receive one or more of the following notices, as applicable:

(a) DC Flex Program: Notice of Ineligibility to Enter Lottery;

(b) DC Flex Program Lottery Results: Conditional Offer of Enrollment;

(c) DC Flex Program Lottery Results: Household Not Selected;

(d) DC Flex Program: Notice of Enrollment in the Program;

(e) DC Flex Program Enrollment: Unable to Verify Eligibility; and

(f) DC Flex Program Enrollment: Notice of Termination.

7903.12 Any household that submits an application for Program enrollment, but is not enrolled as a result of the processes described in § 7903.5 – 7903.10 will receive oral and written notice via US Postal Service. Written notice shall be one or more of the notices listed in § 7903.11, as applicable, which shall include:

(a) A clear statement of the client's application status, eligibility status, or termination from the Program;

(b) A clear and detailed statement of the factual basis for the action described in the notice, including the date or dates on which the basis or bases for the denial occurred;

(c) A reference to the statute, regulation, policy, or Program Rule pursuant to which the denial is being implemented;

(d) A clear and complete statement of the client's right to appeal the action through fair hearing and administrative review proceedings pursuant to § 7910, or the client's right to reconsideration pursuant to rules established by the Provider in accordance with Section 18 of the HSRA (D.C. Official Code § 4-754.32), including the appropriate deadlines for instituting the appeal or reconsideration; and

(e) A statement of the client's right, if any, to continuation of benefits pending the outcome of any appeal, pursuant to § 7910.3.

7903.13 Any household that submits an application for Program enrollment and successfully completes the application and eligibility verification processes described in §§ 7903.5 – 7903.10 and § 7904, shall receive the type of written notice from the Department listed at §7903.11(d). This notice shall include the information listed in § 7904.9.

7903.14 Any household that submits an application for Program enrollment, is enrolled in the Program, but is terminated from Program enrollment, as described in § 7908.2, shall receive the type of written notice from the Department listed at § 7903.11(f). This notice shall include the information listed in § 7908.3.

7904 ELIGBILITY VERIFICATION AND PROGRAM ENROLLMENT

7904.1 From each household offered a Program slot, the Department shall request documentation that will enable the Department to verify eligibility for the Program. The Department will contact each household through the US Postal Service, email, telephone or other means determined by the Department.

7904.2 Documentation that the Department shall use to verify eligibility for the Program may include, but is not limited to:

(a) Birth certificates;

(b) District identification;

(c) Child custody reports;

(d) Copy of a current, valid lease agreement specifying the landlord's name and contact information, and the head of household's name;

(e) Pay stubs for the most immediate past two (2) months prior to Program application; and

(f) Earned Income Tax Credit filing for most immediate tax-year prior to Program application.

7904.3 In addition to documents listed in § 7904.2, the Department may use in-person interviews and third party information to verify Program eligibility.

7904.4 Each head of household offered a Program slot shall also sign and submit to the Department a release form, either personally or through an authorized representative, which authorizes the Department to obtain or verify information necessary to confirm Program eligibility.

7904.5 If further information is needed from the household to verify Program eligibility, the Department shall request additional information by telephone, email or US Postal Service. This request shall specify the information needed to complete the household's eligibility verification and the timeframe in which the additional documentation must be provided to the Department.

7904.6 The Department will notify the household once all requested documentation needed to verify eligibility has been received.

7904.7 If a household has not obtained and provided to the Department the requested information needed to verify eligibility for the Program within thirty (30) calendar days of the date of the Conditional Offer of Enrollment, as listed in § 7903.11(b), the household will lose its spot on the list and a new household will be offered the subsidy, as described in § 7903.10.

7904.8 The Department shall determine the eligibility in as short a time as feasible, but not later than ten (10) business days after receipt of all requested information by the Department.

7904.9 If a household successfully completes the application and eligibility verification processes described in § 7903 and this section, the Department shall give to the applicant, directly or through an authorized representative, a written notice entitled "DC Flex Program: Notice of Enrollment in the Program", as listed in § 7903.11(d), which shall state:

(a) That the applicant is determined eligible and is enrolled in the Program;

(b) That receipt of Program assistance is conditioned upon the head of household's participation in all required Program activities as may be described in the Program Rules established in accordance with Section 18 of the HSRA (D.C. Official Code § 4-754.32);

(c) The length of time for which the Program's subsidy will be provided, per the applicant's successful compliance with the Program recertification criteria set forth in § 7906; and

(d) Name and contact information for the Provider that the Department will use to administer the Program.

7904.10 Upon a household's enrollment in the Program, the Department will facilitate the household's transition from any other District or federal government rental assistance program to ensure the household's compliance with the eligibility requirement set forth in § 7901.5.

7904.11 At the discretion of the Director, a household may receive an extension on the timeline described in the application and eligibility verification process requirements described in § 7903.9, § 7903.10 or § 7904.7, for a demonstrated reason of good cause. For the purposes of this subsection, "good cause" means:

(a) Serious illness or injury of household member or immediate family member;

(b) Death of household member or immediate family member;

(c) Incarceration or detention of household member; or

(d) Other crisis, emergency, or unavoidable circumstances that prevented the timely completion of the eligibility verification process.

7905 PROGRAM ADMINISTRATION

7905.1 The Department shall issue a competitive grant solicitation to select an Provider for the Program.

7905.2 The Department will determine what percentage of the annual allotment shall be dedicated to the Provider's allowable administrative fees, as described in § 7905.3, and the remaining total that shall be used for household financial assistance.

7905.3 The percentage of the annual allotment dedicated for the Provider's allowable administrative fees shall be used to pay for costs that are associated with the general operation of the Program and that cannot be attributed to any one enrolled household. These administrative fees may include:

(a) Staff salaries and fringe benefits;

(b) Overhead expenses, which may include, but are not limited to, supplies and IT equipment;

(c) Local travel for duties associated with program administration/oversight; and

(d) Other expenses agreed upon by the Department and Provider, consistent with District and federal law.

7905.4 The Department will refer households enrolled in the Program to the Provider.

7905.5 The Provider shall make available at least one in-person budgeting or financial management training for enrolled households within the first three (3) months of each household's enrollment into the Program, and monitor the enrolled households' participation in this training and others, if provided. If the Provider does not administer its own such training, the Provider may secure this type of training from another entity and coordinate the enrolled household's participation in this training. The Provider shall also make financial coaching or consultation opportunities available to clients in a manner approved by the Department.

7905.6 The Provider shall use the available granted funds to set up an escrow account and checking account for each enrolled household. The escrow account shall be solely administered by the Provider on behalf of the head of household. The checking account shall be a joint account administered by the Provider and head of household.

7905.7 The Provider shall assist the head of household to secure checks or a debit card linked to the checking account in the name of the head of household.

7905.8 The Provider will receive seven thousand two hundred dollars ($7,200) per year for each household enrolled in the Program. A year shall be defined as a twelve (12) month cycle, with the first month of the year dependent on the household's enrollment in the program. Based on the availability of funds, the Department reserves the right to adjust, by rule, the amount of funding provided to each enrolled household.

7905.9 Upon a household's enrollment into the Program, the Provider shall transfer seven thousand two hundred dollars ($7,200), or a different amount established by rule pursuant to § 7905.8, into an escrow account it has established and will solely administer on behalf of that head of household. The Provider shall then transfer funds from the escrow account into the household's checking account each month so that funds available to the household equal the total cost for one month's rent amount, per terms of the household's lease.

7905.10 Each month, the head of household can access the full amount available in the checking account (if needed), or a lesser amount needed to bridge any gap between their monthly income available for rent and their actual monthly rent expenses. A head of household may choose not to use any of the available funds. Any amount not used in one month rolls over and is available for future use throughout the year.

7905.11 If a household meets the Program Recertification requirements described in § 7906, does not owe rental arrears on their unit, and has Program funds remaining at the end of the Program year, the household may:

(a) Apply all of the remaining funds for use in the next annual Program year cycle, or

(b) Withdraw up to five hundred dollars ($500) of the remaining funds for other household expenses and apply the remaining funds for use in the next annual Program year cycle.

7905.12 If the household has funds remaining, in either the escrow account administered on behalf of the household or the household's checking account or both, at the

end of the Program pilot period and does not owe rental arrears on their unit, the household may use the funds to pay for rent.

7905.13 Table 1 below provides an example of the process described in §§ 7905.9 – 7905.12.

At the beginning of the Program, Year 1, an annual total lump sum of seven thousand two hundred dollars ($7,200) is deposited into the escrow account for Household X. The monthly rent total for Household X is $1,600. Over the twelve (12) month year, the Provider transfers funds from the escrow account as necessary to maintain a balance of $1,600 in the joint checking account held with Household X. Household X's monthly income fluctuates, and in some months there is not enough money to pay the total rent amount. In the months when Household X's available income is less than the total rent amount of $1,600, the Household uses funds available in its checking account. At the end of Year 1, Household X has a remaining balance of four hundred dollars ($400).

Table 1: Year 1- Monthly Rent Amount = $1,600

	Savings (Escrow) Balance	Amount of Program Subsidy Transferred to Checking Account	Amount Accessible by Household via Checking Account	Amount of Program Subsidy Used by Household	Amount Paid by Household	Amount Remaining in Checking Account at End of Month
Month 1	$7,200	$1,600	$1,600	$1,000	$600	$600
Month 2	$5,600	$1,000	$1,600	$1,000	$600	$600
Month 3	$4,600	$1,000	$1,600	$500	$1,100	$1,100
Month 4	$3,600	$500	$1,600	$300	$1,300	$1,300
Month 5	$3,100	$300	$1,600	$0	$1,600	$1,600
Month 6	$2,800	$0	$1,600	$0	$1,600	$1,600
Month 7	$2,800	$0	$1,600	$600	$1,000	$1,000
Month 8	$2,800	$600	$1,600	$400	$1,200	$1,200
Month 9	$2,200	$400	$1,600	$400	$1200	$1,200
Month 10	$1,800	$400	$1,600	$800	$800	$800
Month 11	$1,400	$800	$1,600	$1,600	$0	$0
Month 12	$600	$600	$600	$200	$1400	$400

7905.14 Table 2 below provides a continuance of the example shown in Table 1. Household X does not owe rental arrears on their unit and decides to add the remaining four hundred dollars ($400) from Year 1 to the total amount deposited into Household X's escrow account for the following year, Year 2. The addition of the four hundred dollars ($400) from Year 1 is reflected in the escrow balance of Year 2, Month 1. The Year 2 starting balance equals the seven thousand two hundred dollars ($7,200) of the annual Program assistance, plus the four hundred dollars ($400) carried over from Year 1.

Table 2: Year 2- Monthly Rent Amount = $1,600

	Savings (Escrow) Balance	Amount of Program Subsidy Transferred to Checking Account	Amount Accessible by Household via Checking Account	Amount of Program Subsidy Used by Household	Amount Paid by Household	Amount Remaining in Checking Account at End of Month
Month 1	$7,600*	$1,600	$1,600	$400	$1,200	$1,200
Month 2	$6,000	$400	$1,600	$400	$1,200	$1,200
Month 3	$5,600	$400	$1,600	$400	$1,200	$1,200
Month 4	$5,200	$400	$1,600	$0	$1,600	$1,600
Month 5	$4,800	$0	$1,600	$0	$1,600	$1,600
Month 6	$4,800	$0	$1,600	$1,600	$0	$0
Month 7	$4,800	$1,600	$1,600	$1,600	$0	$0
Month 8	$3,200	$1,600	$1,600	$1,200	$400	$400
Month 9	$1,600	$1,200	$1,600	$600	$1,000	$1,000
Month 10	$400	$400	$1,400	$400	$1,200	$1,000
Month 11	$0	$0	$1,000	$800	$800	$200
Month 12	$0	$0	$200	$200	$1,400	$0

7905.15 With the exception of end of year funds, the only eligible payee on the account will be the landlord of the unit the household lives in. The Provider will be responsible for monitoring account activity to ensure the head of household is using checking account funds to pay the landlord on record.

7905.16 The landlord must have a business license and a Certificate of Occupancy for the household's unit that is in good standing.

7905.17 The household's rental unit may be subject to required inspections as part of the requirement to be legally licensed and registered in the jurisdiction. The Department may offer or require additional inspections as part of the Program.

7905.18 The Provider shall establish a dispute resolution process for complaints households may raise related to the administration of the Program. This process shall be described in Program Rules.

7906 RECERTIFICATION REQUIREMENTS

7906.1 To remain eligible for the Program, each enrolled household shall complete a recertification process annually.

7906.2 A household shall remain eligible for the Program if the household continues to meet requirements set forth in sections § 7901.1 - 7901.3 and continues to be eligible for services under the Continuum of Care.

7906.3 Additionally, the household shall meet the following to remain eligible for the Program:

(a) Has a total annual income less than or equal to the recertification income limit, based on the United States Department of Housing and Urban Development's Median Family Income Limits for the Washington DC Metropolitan Region, to be published by DHS not less than annually. The recertification limit shall not be less than 40% of Family Median Income;

(b) Is headed by a person that is twenty-one (21) years old or older, and who meets the following requirements:

(1) Has physical custody of one or more minor children, or one or more youth that continues to reside in the household;

(2) Is currently employed or has recent history of employment; and

(3) Is the lease holder for a rental unit; and as the lease holder, does not face a housing emergency in which immediate action is necessary to avoid homelessness or eviction.

(c) Has not accessed any non-Program source of emergency, temporary, or permanent government-funded rental assistance:

(1) Before exhausting its annual allotment of Program funds and any remaining Program funds from the previous year; or

(2) More than once during the previous year.

7906.4 The Provider shall conduct a recertification assessment of each household to confirm the household meets the Program's recertification standards.

7906.5 If a household does not meet the recertification requirements set forth in this section, the Provider shall provide oral notice to the household. Additionally, the Provider shall provide written notice described in § 7903.11(f) to the household, via email or US Postal Service, at least fifteen (15) days before the effective date of the termination. This notice will specify the recertification requirements the household did not meet during its recertification assessment.

7907 RELOCATION

7907.1 At any point during the Program, a household may choose to relocate to a new unit that better meets the household's needs. The household shall be responsible for updating the Provider and providing appropriate documentation of the new lease agreement. The Provider shall not approve the payment of funds to a new landlord until it has received appropriate documentation of the new lease.

7908 TERMINATION FROM PROGRAM

7908.1 Termination pursuant to this section refers to a termination of Program assistance only and does not provide the Provider or the Department with any authority to interfere with a household's tenancy rights under the lease agreement as governed by Title 14 of the District of Columbia Municipal Regulations.

7908.2 The Provider shall adopt Program Rules to provide additional guidance on the DC Flex Program. In accordance with the DC Flex Program Rules, which shall be signed by households at the time of Program enrollment, the Department or Provider may terminate Program assistance to a household, in compliance with Section 22 of the Act (D.C. Official Code § 4-754.36).

7908.3 If a household is terminated from the Program, the Provider shall provide oral notice to the household. Additionally, the Provider shall give to the household, personally or through an authorized representative, a written Notice of Termination at least fifteen (15) days before the effective date of the termination, which shall state:

(a) The household is being terminated;

(b) The effective date of the termination;

(c) The reason or reasons for the termination, including the date or dates on which the basis or bases for the termination occurred;

(d) The statute, regulation, or program rule under which the termination is being made;

(e) That the household has a right to appeal the termination through a fair hearing and administrative review, including deadlines for requesting an appeal; and

(f) That the household has a right to continuation of Program assistance pending the outcome of any fair hearing requested within fifteen (15) days of receipt of written notice of a termination, as described in § 7910.

7908.4 A household that is terminated from the Program will immediately lose access to any and all Program funds remaining in the escrow and checking account, subject to the right to continuation of Program assistance as described in § 7910.3.

7909 SUMMARY OF PROVIDER RESPONSIBILITIES

7909.1 The Provider is responsible for the following:

(a) Establishing an escrow and checking account for each household enrolled in the Program;

(b) Delivering directly, or coordinating with another entity to offer periodic budgeting or financial literacy training to each household and monitor the household's participation in these trainings;

(c) Monitoring each household's monthly payment activity;

(d) Providing each household with general referrals and reminders about resources available within the community;

(e) Reviewing the eligibility of each household to ensure that the household remains eligible per the recertification standards outlined in § 7906;

(f) If applicable, updating the name of each household's landlord when a household moves to a new housing unit, or the landlord on a lease changes;

(g) Assisting the Department with program evaluation activities, including reasonable data collection, providing administrative records, and making staff available for interviews;

(h) Submitting to the Department quarterly reports, at the individual household level and aggregate level, that include information listed in § 7908.2 and §7908.3; and

(i) Other tasks agreed upon by the Department and Provider.

7909.2 The Provider shall submit to the Department a formal quarterly report that may include, but is not limited to, the following for each enrolled household:

(a) Frequency in which each household accessed the full monthly rent limit;

(b) Average amount of funds accessed from each household's checking account each month; and

(c) Participation in budget or financial planning classes.

7909.3 The Provider shall submit to the Department a formal quarterly report that shall include, but is not limited to, the following for the cohort of enrolled households:

(a) Payment activity of the households for the current quarter;

(b) Trend analysis that shows the payment activities of the households over the previous quarter(s), where applicable;

(c) Average and median amounts of the Program subsidy used by the households monthly;

(d) Addresses of participating households and other descriptive statistics identified or requested by the Department; and

(e) Household attrition from the Program.

7909.4 The Provider shall submit reports to the Department via a method determined by the Department.

7910 FAIR HEARING AND ADMINISTRATIVE REVIEW

7910.1 An applying household or participating Program household shall have ninety (90) calendar days following the receipt of a written notice described in §§ 7903.11(a), (c), (e), or (f) to request a fair hearing, in accordance with the hearing provisions in Section 26 of the HSRA (D.C. Official Code § 4-754.41), for the action that is the subject of the written notice.

7910.2 Upon receipt of a fair hearing request, the Department shall offer the petitioner household or its authorized representative an opportunity for an administrative review in accordance with Section 27 of the HSRA (D.C. Official Code § 4-754.42), except that if an eviction is imminent, the Department shall take all reasonable steps to provide an expedited administrative review to maximize resolution of the appeal.

7910.3 In accordance with Section 9(a) of the HSRA (D.C. Official Code § 4-754.11(a)(18)), any household that requests a fair hearing within fifteen (15) days of receipt of written notice of a termination pursuant to § 7908 shall have the right to the continuation of Program benefits pending a final decision from the fair hearing proceedings.

7999 DEFINITIONS

7999.1 The terms and definitions in 29 DCMR § 2599 are incorporated by reference in this chapter.

7999.2 For the purposes of this chapter, the following additional terms shall have the meanings ascribed:

Authorized representative – an individual who is at least eighteen (18) years of age, who is acting responsibly on behalf of the applicant, and has sufficient knowledge of the applicant's circumstances to provide or obtain

necessary information about the applicant, or a person who has legal authorization to act on behalf of the applicant.

Government-funded rental assistance program – a program administered or funded by federal, state, or local government that provides rental assistance for the purpose of reducing the tenant's rent or assisting with back rent.

Median Family Income - the periodic calculation provided by the United States Department of Housing and Urban Development, adjusted for family size without regard to any further adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs it administers. This calculation is used to determine a household's eligibility for the Program.

Minor – a child under eighteen (18) years of age.

Provider – an organization that receives Flexible Rent Subsidy Pilot Program funds and is authorized to administer the Program's services.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

Determinations of Eligibility for the Lead Pipe Replacement Assistance Program

The Director of the Department of Energy and Environment (Department), pursuant to 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. & 2019 Supp.)); the Lead Water Service Line Replacement and Disclosure Amendment Act of 2018 (the Act), effective March 13, 2019 (D.C. Law 22-241; 66 DCR 923 (January 25, 2019)); Section 203(15) of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111: D.C. Official Code § 34-2202.03(15) (2019 Repl.)); and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the adoption of the following emergency rules to add a new Chapter 38 (Lead Pipe Replacement Assistance Program Eligibility Determinations) to Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking establishes the process and appeal procedures related to a new assistance program for DC Water customers, referred to as the Lead Pipe Replacement Assistance Program (LPRAP) for which the Department will be providing funding. LPRAP provides eligible property owners with Department-funded benefits towards the replacement of their lead service line. The eligibility criteria were established in the Act. Accordingly, the Department will determine whether residents meet the eligibility criteria for receiving assistance through this program and will advise DC Water as to whether residents meet the eligibility criteria for receiving assistance. These regulations establish a process for DC Water residential customers to apply for benefits under LPRAP, and for the Department to make a determination of eligibility.

This rulemaking is being promulgated as an emergency to allow eligible District property owners to immediately have access to the described benefits. DC Water notifies the property owner when it is replacing the service lines on public property and gives the owner the opportunity to pay for the services lines on private property to be replaced at the same time. Under the Act, DC Water must replace lead service lines on private property when replacing lead service lines on public property if the owner consents and funding is available. If the lead service line is only on private property, the cost to replace the lead service line is prohibitive to many District residents. It is necessary to adopt this rule immediately to promote the public welfare by implementing this assistance program.

These emergency rules were adopted on October 1, 2019, became effective immediately, and will remain in effect for up to one hundred twenty (120) days from the date of adoption, or January 29, 2020, or until publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Title 20 DCMR, ENVIRONMENT, is amended by adding a new Chapter 38 as follows:

CHAPTER 38 LEAD PIPE REPLACEMENT ASSISTANCE PROGRAM ELIGIBILITY DETERMINATIONS

3800 **LEAD PIPE REPLACEMENT ASSISTANCE PROGRAM**
3801 **APPLICATION PROCESS**
3802 **ELIGIBILITY**
3803 **BENEFITS**
3804 **DENIAL, REDUCTION, OR REVOCATION OF BENEFITS**
3805 **ADMINISTRATIVE APPEALS**
3899 **DEFINITIONS**

3800 LEAD PIPE REPLACEMENT ASSISTANCE PROGRAM

3800.1 This chapter sets forth the process and appeal procedures for the Department's determination of income eligibility for the Lead Pipe Replacement Assistance Program (LPRAP).

3801 APPLICATION PROCESS

3801.1 In order for the Department to determine the financial eligibility of an applicant to receive LPRAP assistance, a person shall file an application with the Department.

3801.2 The Department shall prescribe the form of the application to be filed, and provide either a paper or electronic application, which shall be signed by the applicant. The application shall state that the making of a false statement in the application, or the signing of the application with knowledge that facts stated in the application are not true, carries criminal penalties in accordance with Section 404 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405).

3801.3 An authorized representative may apply on behalf of an applicant if the applicant provides:

(a) A written and signed statement stating why the applicant cannot complete an application without a representative; and

(b) The name and address of the person authorized to act on the applicant's behalf.

3801.4 If requested by an applicant with a disability, or the representative of a person with a disability authorized pursuant to § 3801.3, the Department may assist the applicant or representative with the aspects of the application process necessary to ensure that the applicant with a disability has an equal opportunity to submit an application.

3801.5 The Department may assist with an application for an applicant who is unable to apply for the benefit in person for a reason other than disability, including making a visit to an applicant's home, if:

(a) The applicant is sixty-five (65) or older, infirm, or unable to travel; or

(b) The applicant's residence is located in a building or complex of buildings that house many other likely applicants.

3802 ELIGIBILITY

3802.1 In order to be eligible for a benefit, the applicant shall:

(a) Be the property owner;

(b) Reside in the District of Columbia; and

(c) Meet the income criteria established at D.C. Official Code § 34-2159.

3802.2 A determination of financial eligibility shall be based on the gross income of the household, unless a member of the household is self-employed, in which case the determination of financial eligibility shall be based on the adjusted gross income.

3802.3 As a condition of eligibility, each applicant shall sign a release, or provide electronic acknowledgement, authorizing the Department to obtain or verify information necessary to process the application or for reporting purposes.

3802.4 Each applicant shall cooperate fully in establishing his or her eligibility, the nature of the need, and the extent of the need, each of which shall include providing documentation or other proof of:

(a) Household composition;

(b) Income; and

(c) Any additional information that the Department may require.

3802.5 The Department may obtain the information used in determining eligibility from:

(a) A document;

(b) A telephone conversation or interview for which notes are taken;

(c) Data from another government agency or utility provider;

(d) Internet data; and

(e) Other relevant sources.

3802.6 The eligibility and benefit determination will be completed within thirty (30) days after the Department receives a completed application, or, in the event of an unexpected or extenuating circumstance that affects the Department, such as a natural disaster, as promptly thereafter as possible, except that the following shall toll the timeline:

(a) An applicant's failure to supply information to document facts stated in an application;

(b) An inability to contact an applicant after three (3) attempts;

(c) Evidence of misrepresentation in an application;

(d) A failure to respond by a third party from whom the Department has requested information and over whom the Department has no control; or

(e) A delay in receipt of necessary information over which the Department has no control.

3802.7 The Department shall notify the applicant of the eligibility and benefit determination in accordance with the provisions of D.C. Official Code § 34-2159.

3802.8 An applicant has ninety (90) days from the date of approval to complete the work. If the work is not completed within ninety (90) days, the Department may require the applicant to reapply to receive benefits.

3803 BENEFITS

3803.1 Benefits for LPRAP will be provided in accordance with the provisions of D.C. Official Code § 34-2159.

3803.2 The cap on replacement costs is equal to one thousand two hundred fifty dollars ($1,250.00) plus one hundred fifty dollars ($150.00) per foot of pipe to be replaced. An application with project costs in excess of this cap may be denied or required to submit an additional quote for further consideration.

3803.3 Nothing in this chapter shall be interpreted to mean that a LPRAP benefit provided to eligible households by the Department is an entitlement, continuing or otherwise.

3803.4 If the Department determines that remaining available funds may be insufficient to provide relief during a fiscal year, the Department may:

(1) Suspend the process of taking applications; or

(2) Suspend the process of awarding assistance.

3804 DENIAL, REDUCTION, OR REVOCATION OF BENEFITS

3804.1 If an applicant is determined ineligible for LPRAP, the Department will provide to the applicant notice of ineligibility, to include:

(a) A statement of the determination of ineligibility and an explanation of that determination;

(b) A statement of the action that the applicant must take, if any, to be found eligible; and

(c) Notice of the applicant's right to appeal the determination, as provided in § 3805.

3804.2 If the Department determines that a prior eligibility decision for LPRAP was based on material error, falsity, misrepresentation, concealment, omission, or fraud, the Department will:

(a) Reopen the application;

(b) Inform the applicant of the Department's final action or intended action;

(c) Provide the applicant with a reasonable opportunity to respond; and

(d) Revise or revoke the determination of eligibility.

3804.3 The applicant shall not have a right to appeal a reduction, suspension, or revocation of the benefit based on a lack of available funding.

3805 ADMINISTRATIVE APPEALS

3805.1 With respect to a matter governed by §§ 3801 to 3804 of this chapter, an applicant adversely affected or aggrieved by an action of the Department may file a written appeal to the Director of the Department, or the Director's designee, stating the basis of the appeal, and providing any information or material that would support a change to the Department's action. The appeal must be filed within thirty (30) calendar days after receipt of the notice of the action.

3805.2 The decision of the Director or the Director's designee upon appeal shall become the final action of the Department. An applicant may seek review of that decision with, and request a hearing before, the Office of Administrative Hearings (OAH)

within thirty (30) days of the Department's action. Prehearing practice and the conduct of the hearing shall be in accordance with the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801 *et seq.*) and the regulations set forth at Title 1, Chapter 28 of the District of Columbia Municipal Regulations.

3899 DEFINITIONS

3899.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

DC Water - the District of Columbia Water and Sewer Authority.

Department – the District of Columbia Department of Energy and Environment.

LPRAP – The Lead Pipe Replacement Assistance Program that provides eligible households with assistance for the replacement of lead service lines on private property and is administered by DC Water and the Department.

All persons desiring to comment on the proposed regulations should file comments in writing not later than forty-five (45) days after the publication of this notice in the *D.C. Register*. All comments should be labeled "Lead Pipe Replacement Assistance Program" and filed with the Department of Energy and Environment, Affordability and Efficiency Division, 1200 First Street, N.E., 5th Floor, Washington D.C. 20002, Attention: Lead Pipe Replacement Assistance Program Comments, or by e-mail to mackenzie.mathews@dc.gov. All comments will be treated as public documents and will be made available for public viewing on the Department's website at www.doee.dc.gov. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. If a comment is sent by e-mail, the e-mail address will automatically be captured and included as part of the comment that is placed in the public record and made available on the Department's website.

The Department will receive comments on this proposed rulemaking at a public hearing, which is scheduled from 4:00 p.m. to 6:00 p.m. on Tuesday, December 10, 2019, at the Department of Energy and Environment, 1200 First Street, N.E., 5th Floor, Washington, D.C. 20002. A Notice of Public Hearing and the agenda for the hearing will be published in the *D.C. Register*.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health ("Department"), pursuant to the authority set forth in Section 5(a) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code, § 44-504(a) (2012 Repl.)) ("Act"), and in accordance with Mayor's Order 98-137, dated August 20, 1998, hereby gives notice of the adoption, on an emergency basis, of the following new Chapter 99 (Home Support Agencies) of Title 22 (Health), Subtitle B (Public Health and Medicine) of the District of Columbia Municipal Regulations (DCMR).

As a result of investigating complaints and communicating with individuals, providers and relevant associations, the Department has determined there are not enough licensed providers of non-medical personal care services in the District to meet the current need. There are thousands of people in the District who require assistance with activities of daily living, such as dressing, eating, bathing and toileting. Many District residents are receiving these services from individuals and groups that are not licensed or trained to deliver them. In some cases that the Department investigated, the Department discovered that service providers were actually licensed for a different purpose and were not providing safe and healthy services.

The Director has been delegated the authority under Section 2(b) of the Act (D.C. Official Code § 44-501(b)) to determine the need for licensed facilities other than those already defined in the Act. The Director has determined that a new licensure category is required for home support facilities that only provide these non-medical health care services. These rules establish this category of facility and state the process and requirements for licensure. Among other things, the rules require home support agencies to ensure that aides are certified as home health aides, assess clients to determine whether they have needs beyond those that can be addressed by a home support agency, maintain sufficient personnel and supervision to deliver safe services, implement written client service policies to which the clients and the Department will have access, and report complaints to the Department. Also note that simply because someone has a criminal record does not mean that they are disqualified from participating in this program. There are rules that narrow the application to particular convictions at a particular time.

The rules are issued on an emergency basis because they are necessary for the immediate preservation of the public health, safety, and welfare of the individuals currently receiving unlicensed personal care services. The rules will allow for the prompt licensure of home support agencies so that vulnerable residents will receive the quality assistance they need without suffering a break in service when the Department begins enforcement action against unqualified, unlicensed providers.

This emergency rule was adopted on July 24, 2019 and became effective on that date. It will expire on November 20, 2019. The Director of the Department also gives notice of her intent to adopt this rule as final in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register,* and upon completion of the forty-five (45) day Council period of review if the Council does not act earlier to adopt the rules by resolution.

Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is amended by adding a new Chapter 99, HOME SUPPORT AGENCIES, to read as follows:

CHAPTER 99 HOME SUPPORT AGENCIES

Secs.

9900 GENERAL PROVISIONS
9901 OPERATING OFFICE
9902 APPLICATION FOR LICENSURE
9903 LICENSURE
9904 LICENSE FEES
9905 INSURANCE
9906 GOVERNING BODY
9907 DIRECTOR
9908 POLICIES AND PROCEDURES
9909 PERSONNEL
9910 ADMISSIONS
9911 CLIENT SERVICE AGREEMENT
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9900 GENERAL PROVISIONS

9900.1 These regulations are implemented pursuant to Sections 2(b) and 5 of the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 ("Act"), effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501(b) and 44-504(a)).

9900.2 Each home support agency serving one or more clients in the District of Columbia shall be licensed and shall comply with the requirements in this chapter and, except as otherwise provided herein, with the regulations in Chapter 31 (Licensing of Health Care and Community Residence Facilities) of Title 22-B of the District of Columbia Municipal Regulations (“DCMR”), which contains provisions on inspections, licensing and enforcement actions pertaining to facilities authorized under the Act.

9900.3 Each home support agency shall comply with all other applicable federal and District laws and regulations.

9901 OPERATING OFFICE

9901.1 Each home support agency shall maintain an operating office within the District of Columbia. This office shall be staffed at least eight (8) hours per business day.

9901.2 The business hours of the operating office shall be posted publicly so that they are visible from the outside of the office. The home support agency shall maintain a public website that provides, at a minimum, the home support agency's business hours, services provided, ownership information, key personnel, and contact information that includes a phone number and email address.

9901.3 A separate license shall be required for each operating office maintained by a home support agency.

9901.4 Each operating office shall either store at the office in paper form or have immediately available electronically the following records:

(a) Client records for all clients served within the District of Columbia;

(b) Personnel records for all employees;

(c) Home support agency policies and procedures;

(d) Incident reports and investigations; and

(e) Complaint reports and investigations.

9901.5 All other records and documents required under this chapter and other applicable laws and regulations that are not maintained within the operating office shall be produced for inspection within two (2) hours after a request by the Department, or within a shorter time if the Department so specifies.

9901.6 Each home support agency shall post its license in a conspicuous place within the operating office.

9901.7 Prior to any change in office location, a home support agency shall:

(a) Notify the Department in writing at least sixty (60) days prior to the change;

(b) Provide the following documentation to the Department:

(1) The new address;

(2) A copy of the lease agreement for the new office location, if applicable;

(3) A certificate of insurance reflecting the new address;

(4) A certificate of occupancy reflecting the new address;

(5) A Clean hands certificate in accordance with the D.C. Official Code §§ 47-2861 *et seq.*; and

(6) A Certificate of Good Standing for a corporation to be obtained from the Office of the Registrar of Corporations at the Department of Consumer and Regulatory Affairs; and

(c) Notify clients and staff in writing at least thirty (30) days prior to the change.

9901.8 The operating office shall be open to employees, clients, client representatives, and prospective clients and their representatives during business hours.

9902 APPLICATION FOR LICENSURE

9902.1 Applications for licensure shall be processed in accordance with this section and Chapter 31 of Title 22-B DCMR.

9902.2 The submission of an application does not guarantee that the Department will issue a license.

9902.3 Applicants for licensure shall submit the following information to the Department as part of the application:

(a) The names, addresses, and types of all entities owned or managed by the applicant;

(b) A copy of the applicant's operating policies and procedures manual for the home support agency;

(c) The identity of each officer and director of the corporation, if the entity is organized as a corporation, including name, address, phone number, and email;

(d) A copy of the Articles of Incorporation and Bylaws, if the entity is organized as a corporation;

(e) A copy of the Partnership Agreement and the identity of each partner if the entity is organized as a partnership, including name, address, phone, number, and email;

(f) A copy of the Articles of Formation and Operating Agreement, if the entity is organized as a limited liability company;

(g) The identity of the members of the governing body, including name, address, phone number, and email;

(h) The identity of any officers, directors, partners, managing members or members of the governing body who have a financial interest of five percent (5%) or more in an applicant's operation or related businesses, including name, address, phone number, and email;

(i) Disclosure of whether any officer, director, partner, employee, or member of the governing body has a felony criminal record;

(j) The name of the Director who is responsible for the management of the home support agency and the name of the Client Service Coordinator, if applicable;

(k) A list of management personnel, including their credentials; and

(l) Any other information required by the Department.

9902.4 Each applicant shall be responsible for submitting a complete application, including all information required pursuant to § 9902.3. The Department reserves the right to return an incomplete application to the applicant: The return of an incomplete application to the applicant shall not be considered a denial of the application.

9902.5 If the Department returns the application with identified deficiencies:

(a) The applicant shall have thirty (30) days to correct the identified deficiencies and return the application to the Department; and

(b) If the applicant resubmits the application to the Department and has not corrected all the deficiencies, the application shall be deemed incomplete and returned the applicant. The applicant shall have the option of filing a new application along with a new processing fee.

9902.6 As part of its review of a home support agency's application, the Department shall conduct an on-site walk through of the business location to verify that the office is capable of operating.

9903 LICENSURE

9903.1 At the beginning of a home support agency's license year, the Department shall issue a provisional license for a period of ninety (90) days to each home support

agency that has completed the application process consistent with these regulations, has passed the on-site walk through by the Department, and whose policies and procedures demonstrate compliance with the rules and regulations pertaining to home support agency licensure.

9903.2 A provisional license shall permit a home support agency to hire staff and establish a client caseload;

9903.3 To be eligible for a permanent license, the home support agency shall:

(a) Obtain and demonstrate that the home support agency has a client census equal to or greater than five (5) clients by the end of the ninety (90) day provisional license period;

(b) Notify the Department that is has a client census of at least five (5) clients;

(c) Complete an on-site survey during the provisional license period, provided they have a demonstrated client census of five (5) or more clients; and

(d) Demonstrate during the on-site survey, that it meets the definition of a home support agency in these regulations, complies with these regulations, and is in operation and caring for clients.

9903.4 The Department may, at its discretion, renew a provisional license for up to an additional ninety (90) days in order for the licensee to meet the definition of a home support agency, have a demonstrated client census of five (5) or more clients, and come into substantial compliance with these regulations:

(a) The Department shall designate the conditions and the time period for the renewal of a provisional license;

(b) An initial provisional license issued to a home support agency that is not in substantial compliance with these regulations following an on-site survey by the Department shall not be renewed unless the Department approves a corrective action plan for the home support agency; and

(c) If a home support agency is not in substantial compliance with these regulations after two (2) provisional license periods, the home support agency shall be denied a permanent license.

9903.5 The Department shall grant a permanent license for a period of twelve (12) months, including the provisional license period, to a home support agency that the Department has determined meets the definition of a home support agency, complies with these regulations, and has a demonstrated client census of five (5) or more clients.

9903.6 An existing licensed home support agency shall apply for renewal of its license at least ninety (90) days prior to its expiration.

9903.7 A renewal license shall not be issued to a home support agency that at the time of renewal:

(a) Does not meet the definition of a home support agency as contained within these regulations;

(b) Is not in substantial compliance with these regulations as determined by the Department;

(c) Does not have a demonstrated client census of five (5) or more clients; or

(d) Has one or more deficient practice which presents an immediate threat to the health and safety of its clients.

9903.8 A home support agency that undergoes a modification of ownership or control is required to re-apply for licensure as a new home support agency.

9903.9 The Department shall issue each license only for the premises and the person or persons named as applicant(s) in the license application. The license shall not be valid for use by any other person or at any place other than that designated in the license. Any transfer of the home support agency to a new person or place without the approval of the Department shall result in the immediate forfeiture of the license.

9903.10 A home support agency licensed pursuant to this chapter shall not use the word "health" in its title.

9904 LICENSE FEES

9904.1 License fees for home support agencies shall be based upon a census of clients served in the District of Columbia at the time of applying for the issuance or renewal of a license. The fees shall be as follows:

(a) Initial Application Processing Fee $1200

(b) License Fee $400

(c) 1 – 50 Clients
Annual Renewal Processing Fee $800

(d) 51 – 150 Clients
Annual Renewal Processing Fee $1400

(e) 151 – 350 Clients
Annual Renewal Processing Fee $2200

(f) 351 or more Clients
Annual Renewal Processing Fee $2600

(g) Duplicate of License $100

(h) Late Fee for Renewal Application $100

9905 INSURANCE

9905.1 Each home support agency shall maintain the following minimum amounts of insurance coverage:

(a) Blanket malpractice insurance for all professional employees in the amount of at least one million dollars ($1,000,000) per incident; and

(b) Comprehensive general liability insurance covering personal property damages, bodily injury, libel and slander in the amount of at least one million dollars ($1,000,000) per incident or occurrence and two million dollars ($2,000,000) aggregate.

9906 GOVERNING BODY

9906.1 Each home support agency shall have a governing body that shall be responsible for the operation of the home support agency.

9906.2 The governing body shall:

(a) Establish and adopt by-laws, policies, and procedures governing the operation of the home support agency;

(b) Designate a full-time Director who is qualified in accordance with Section 9907 of this chapter;

(c) Review and evaluate, on an annual basis, all policies and procedures governing the operation of the home support agency to ensure that services promote client care that is appropriate, adequate, effective and efficient. This review and evaluation shall include the following:

(1) A review of feedback from a representative sample consisting of either ten percent (10%) of total District of Columbia clients or forty (40) District of Columbia clients, whichever is less, regarding services provided to those clients; and

(2) A review of all complaints and incidents involving the home support agency, including the nature of each complaint or incident, the home support agency's response, and the resolution;

(d) A written report of the results of the evaluation shall be prepared and shall include recommendations for modifications of the home support agency's overall policies or practices, if appropriate; and

(e) The evaluation report shall be acted upon by the governing body at least annually. The results of the action taken by the governing body shall be documented, maintained, and available for review by the Department.

9907 DIRECTOR

9907.1 The Director shall be responsible for managing and directing the home support agency's operations, serving as a liaison between the governing body and staff, employing qualified personnel, and ensuring that staff members are adequately and appropriately trained.

9907.2 The Director shall be available at all times during the business hours of the home support agency.

9907.3 The Director shall designate, in writing, a similarly qualified person to act in the absence of the Director.

9907.4 The home support agency shall advise the Department in writing within fifteen (15) days following any change in the designation of the Director.

9907.5 The Director shall:

(a) Be a registered nurse licensed in the District of Columbia; or

(b) Have training and experience in health services administration, including at least one (1) year of supervisory or administrative experience in health services or related health programs.

9907.6 If the Director is not a registered nurse, the home support agency shall also have a full-time Client Service Coordinator appointed by the Director who is a registered nurse licensed in the District of Columbia.

9907.7 The Client Service Coordinator, or the Director if the Director is a registered nurse, shall:

(a) Be responsible for implementing, coordinating and assuring the quality of client services;

(b) Be available at all times during the business hours of the home support agency;

(c) Participate in all aspects of services provided, including the development of clients' service plans and the assignment of qualified personnel; and

(d) Provide general supervision and direction of the services offered by the home support agency.

9907.8 The Director, Client Service Coordinator, or an individual designated by the Director in writing, must be on-call outside of the home support agency's business hours.

9908 POLICIES AND PROCEDURES

9908.1 Each home support agency shall develop and implement written operational policies and procedures that govern the day-to-day operations of the home support agency. These policies and procedures shall be approved by the governing body and shall be available for review by the Department.

9908.2 The home support agency's written policies and procedures shall govern the following topics, at a minimum:

(a) Personnel;

(b) Admission and denials of admission;

(c) Discharges and referrals;

(d) Coordination of services;

(e) Records retention and disposal;

(f) Client rights and responsibilities;

(g) Complaint process;

(h) Each service offered;

(i) Billing for services;

(j) Supervision of services;

(k) Infection control; and

(l) Management of incidents.

9908.3 Staff shall be oriented towards the written policies and procedures. The written policies and procedures shall be readily available for use by staff at all times.

9908.4 Written policies and procedures shall be available to clients, prospective clients, and client representatives, upon request.

9909 PERSONNEL

9909.1 Each home support agency shall have written personnel policies that shall be available to each staff member and shall include the following:

(a) The terms and conditions of employment, including but not limited to wage scales, hours of work, personal and medical leave, insurance, and benefits;

(b) Provisions for an annual evaluation of each employee's performance by appropriate supervisors;

(c) Provisions pertaining to probationary periods, promotions, disciplinary actions, termination and grievance procedures;

(d) A position description for each category of employee; and

(e) Provisions for orientation, periodic training or continuing education, and periodic competency evaluation.

9909.2 Each home support agency shall maintain accurate personnel records, which shall include the following information for each employee:

(a) Name, address and social security number;

(b) Current professional license, registration, or certification, if any;

(c) Resume of education, training certificates, skills checklist, and prior employment, and evidence of attendance at orientation and in-service training, workshops or seminars;

(d) Documentation of current CPR certification, if required;

(e) Health certification as required by Section 9909.7 of this chapter;

(f) Verification of previous employment;

(g) Documentation of reference checks;

(h) Copies of completed annual evaluations;

(i) Documentation of any required criminal background check;

(j) Documentation of all personnel actions;

(k) A position description signed by the employee;

(l) Results of any competency testing;

(m) Documentation of acceptance or declination of the Hepatitis Vaccine; and

(n) Documentation of insurance, if applicable.

9909.3 Each home support agency shall comply with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*), for its employees who are not licensed, certified or registered in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*) ("HORA"), and shall ensure that employees who are licensed, registered, or certified in accordance with the HORA are in compliance with the criminal background check requirements of D.C. Official Code § 3-1205.22.

9909.4 Each home support agency shall maintain its personnel records for all personnel serving clients within the District of Columbia in its operating office in paper form or have these records immediately available electronically.

9909.5 Each employee shall have a right to review his or her personnel records.

9909.6 At the time of initial employment, the home support agency shall verify that the employee, within the six months immediately preceding the date of hire, has been screened for and is free of all communicable diseases.

9909.7 Each employee shall be screened for communicable diseases according to the guidelines issued by the federal Centers for Disease Control and Prevention, and shall be certified free of communicable diseases.

9909.8 No employee may provide personal care services, and no home support agency may knowingly permit an employee to provide personal care services, if an employee:

(a) Injures a client because he or she is under the influence of alcohol, any mind-altering drug or combination thereof; or

(b) Has a communicable disease which poses a confirmed health risk to clients.

9909.9 Each employee who is required to be licensed, certified or registered to provide services in the District of Columbia shall be licensed, certified or registered under the laws and rules of the District of Columbia.

9909.10 Each home support agency shall document the professional qualifications of each employee to ensure that the applicable licenses, certifications, accreditations or registrations are valid.

9909.11 Each home support agency shall ensure that each employee presents a valid home support agency identification prior to entering the home of a client.

9910 ADMISSIONS

9910.1 Each home support agency shall develop and implement written policies on admissions, which shall include, at a minimum, the following:

(a) Admission criteria and procedures;

(b) A description of the services provided;

(c) The amount charged for each service;

(d) Policies governing fees, payments and refunds;

(e) Execution and location of client advance directives (living will and durable power of attorney for health care), as applicable;

(f) Execution and location of client Medical Orders for Scope of Treatment ("MOST"), as applicable;

(g) Communication with the client representative, if applicable;

(h) Client service agreements; and

(i) Client consent for interagency sharing of information.

9910.2 A written summary of the home support agency's admissions policies, including all of the items specified at Subsection 9909.1 of this chapter, shall be made available to each prospective client upon request, and shall be given to each client upon admission.

9910.3 The home support agency shall only admit those individuals whose needs can be met by the home support agency.

9910.4 Each home support agency shall conduct an initial assessment by a registered nurse to ensure that the client does not require services outside of the scope of personal care services. The assessment shall include a home visit and a review of information provided by the prospective client or the client representative and any other pertinent data and shall take place prior to the time that personal care services are initially provided to the client. The assessment must determine whether the home support agency has the ability to provide the necessary services in a safe and consistent manner.

9910.5 The home support agency shall notify each individual requesting services from the home support agency of the availability or unavailability of service, and the reason(s) therefor, within forty-eight (48) hours after the referral or request for services.

9910.6 A home support agency shall maintain records on each person requesting services whose request is not accepted. The records shall be maintained for at least one (1) year from the date of non-acceptance and shall include the nature of the request for services and the reasons for not accepting the client.

9911 CLIENT SERVICE AGREEMENT

9911.1 There shall be a written service agreement between each client and the home support agency. The agreement shall:

(a) Specify the services to be provided by the home support agency, including but not limited to:

(1) Frequency of visits including scheduled days and hours;

(2) Accompaniment and/or transportation agreements as appropriate;

(3) Procedures for emergency medical response; and

(4) Conditions for discharge and appeal;

(b) Specify the procedure to be followed when the home support agency is not able to keep a scheduled client visit;

(c) Specify financial arrangements, which shall minimally include:

(1) A description of services purchased and the associated cost;

(2) An acceptable method of payment(s) for services;

(3) An outline of the billing procedures, including any required deposits, if applicable;

(4) A requirement that all payments by the client for services rendered shall be made directly to the home support agency or its billing representative and no payments shall be made to or in the name of individual employees of the home support agency; and

(5) The home support agency's policies for non-payment;

(d) Identify the client representative, if applicable;

(e) Specify the home support agency's emergency contact information during both business and non-business hours;

(f) Specify the number for the Department of Health's Complaint Hotline;

(g) Be signed by the client or client representative, if applicable, and the representative of the home support agency prior to the initiation of services;

(h) Be given to the client or client representative, if applicable, and a copy shall be kept in the client record; and

(i) Be reviewed and updated as necessary to reflect any change in the services or the financial arrangements.

9912 DISCHARGES, TRANSFERS, AND REFERRALS

9912.1 Each home support agency shall develop and implement written policies that describe discharge, transfer, and referral criteria and procedures, including timeframe for discharge, transfer, or referral if a need for services beyond personal care services is identified.

9912.2 Each client shall receive written notice of discharge or referral no less than seven (7) days prior to the action. The seven (7) day written notice shall not be required, and oral notice may be given at any time, if the transfer, referral or discharge is the result of:

(a) A medical or social emergency;

(b) A physician's order to admit the client to an in-patient facility;

(c) A determination by the home support agency that the referral or discharge is necessary to protect the health, safety, or welfare of the home support agency's staff; or

(d) The refusal of further services by the client or the client representative.

9912.3 Each home support agency shall document activities related to discharge, transfer, or referral planning for each client in the client's record.

9913 CLIENT SERVICE PLAN

9913.1 The home support agency shall provide services in accordance with a written client service plan in agreement with the client or client representative, if applicable.

9913.2 A registered nurse shall develop a service plan on admission based upon the initial assessment of the client and in accordance with Subsection 9917.4.

9913.3 The service plan shall include at least the following:

(a) The scope and types of services, frequency and duration of services to be provided, including any diet, equipment, and transportation required;

(b) Parameters related to services provided pursuant to Subsections 9917.4(e)-(f) of this chapter;

(c) Functional limitations of the client;

(d) Activities permitted; and

(e) Safety measures required to protect the client from injury.

9913.4 A registered nurse shall review and evaluate the service plan at least every ninety (90) days.

9913.5 A copy of the service plan shall be available to the client or client representative upon request.

9913.6 The personnel assigned to each client shall be oriented to the service plan.

9914 CLIENT RECORDS

9914.1 Each home support agency shall establish and maintain a complete and accurate client record of the services provided to each client in accordance with this chapter and accepted professional standards and practices.

9914.2 Each client record shall include the following information related to the client:

(a) Admission data, including name, address, date of service inquiry, date of birth, sex, next of kin, name and contact information of the client representative (if applicable), date accepted by the home support agency to receive services, and source of payment;

(b) Source of referral;

(c) Initial assessment and on-going evaluation;

(d) Signed client services agreement;

(e) Advance directives (living will and durable power of attorney for health care), if applicable;

(f) General Power of Attorney or Guardianship, if applicable;

(g) MOST, if applicable;

(h) Service plan;

(i) History of sensitivities and allergies;

(j) Medication list;

(k) Service delivery notes signed and dated as appropriate by staff;

(l) Documentation of supervision of personal care services;

(m) Documentation of discharge planning, if appropriate;

(n) Discharge summary, including the reason for termination of services and the effective date of discharge;

(o) Documentation of coordination of services, if applicable;

(p) Communications between the home support agency and all health care professionals involved in the client's care; and

(q) Documentation of training and education given to the client and the client’s caregivers.

9915 RECORDS RETENTION AND DISPOSAL

9915.1 Each home support agency shall maintain a records system that shall include the following:

(a) Written policies that provide for the protection, confidentiality, retention, storage, and maintenance of home support agency records; and

(b) Written procedures that address the transfer or disposition of home support agency records in the event of dissolution of the home support agency.

9915.2 If a home support agency is dissolved and there is no identified new owner, the home support agency records shall be retained either electronically or in paper form so as to be retrievable upon request by the client or the client representative for a period of five (5) years following the date of dissolution. The records shall be produced to the client or client representative within thirty (30) days of receipt of a request and at no cost to the client or the client representative.

9915.3 Each home support agency shall inform the Department and each client in writing, within thirty (30) days of dissolution of the home support agency, of the location of the client records and how each client may obtain his or her records.

9915.4 A home support agency shall maintain client records for at least five (5) years after the date of discharge of the client.

9915.5 A home support agency shall maintain records of complaints and incidents for a minimum of five (5) years.

9915.6 A home support agency shall maintain the personnel records of each staff member for at least five (5) years after the date of termination or separation.

9915.7 Department authorities shall have access to home support agency records at all times.

9916 CLIENT RIGHTS AND RESPONSIBILITIES

9916.1 Each home support agency shall develop a written statement of client rights and responsibilities that shall be given, upon admission, to each client who receives personal care services or the client representative, if applicable.

9916.2 Each home support agency shall develop policies to ensure that each client who receives personal care services has the following rights:

(a) To be treated with courtesy, dignity, and respect;

(b) To control his or her own household and life style;

(c) To be informed orally and in writing of the following:

(1) Services to be provided by the home support agency, including any limits on service availability;

(2) The amount charged for each service, and procedures for billing and non-payment;

(3) Prompt notification of acceptance, denial or reduction of services;

(4) Complaint process; and

(5) The telephone number of the Complaint Hotline maintained by the Department;

(d) To receive services consistent with the service agreement and with the client's service plan;

(e) To participate in the planning and implementation of his or her personal care services;

(f) To receive services by competent personnel who can communicate with the client;

(g) To refuse all or part of any service and to be informed of the consequences of refusal;

(h) To be free from mental and physical abuse, neglect, and exploitation by home support agency employees;

(i) To be assured confidential handling of client records as provided by law;

(j) To be educated about and trained in matters related to the services to be provided;

(k) To voice a complaint or other feedback to the Department or the home support agency in confidence and without fear of reprisal from the home support agency or any home support agency personnel, in writing or orally, including an in-person conference if desired, and to receive a timely response to a complaint as provided in these rules; and

(l) To have access to his or her own client records.

9916.3 Each home support agency shall inform all clients that they have the right to make complaints and to provide feedback concerning the services rendered by the home support agency to the Department, in confidence and without fear of reprisal from the home support agency or any home support agency personnel, in writing or orally, including an in person conference if desired.

9916.4 Each home support agency shall develop a statement of client responsibilities regarding the following:

(a) Treating home support agency personnel with respect and dignity;

(b) Providing accurate information when requested;

(c) Informing the home support agency when instructions are not understood or cannot be followed;

(d) Cooperating in making a safe environment for care within the home; and

(e) Providing prompt payment for services.

9916.5 Written policies on client rights and responsibilities shall be made available to the general public.

9916.6 The home support agency shall take appropriate steps to ensure that all information is conveyed, pursuant to these rules, to any client who cannot read or who otherwise needs accommodations in an alternative language or communication method. The home support agency shall document in the client's records the steps taken to ensure that the client has been provided effectively with all required information.

9917 MANAGEMENT OF COMPLAINTS AND INCIDENTS

9917.1 Each home support agency shall develop and implement policies and procedures for receiving, processing, documenting, and investigating complaints and incidents.

9917.2 A complaint may be presented to the home support agency orally or in writing.

9917.3 A written summary of the complaint process shall be given to the client or client representative upon acceptance or denial of services.

9917.4 The telephone number of the Complaint Hotline maintained by the Department shall be posted in the home support agency's operating office in a place where it is visible to all staff and visitors.

9917.5 Each home support agency shall respond to each complaint received by it within fourteen (14) days of receipt, shall investigate the complaint as soon as reasonably possible, and shall, upon completion of the investigation, provide the complainant with the results of the investigation.

9917.6 If the client indicates that he or she is not satisfied with the response, the home support agency shall respond in writing within thirty (30) days from the client's

expression of dissatisfaction. The response shall include the telephone number and address of all District government agencies with which a complaint may be filed and the telephone number of the Complaint Hotline maintained by the Department.

9917.7 The home support agency shall report all incidents involving a client occurring in the presence of staff to the Department within forty-eight (48) hours in addition to other reporting requirements prescribed by law.

9917.8 The home support agency shall investigate all incidents. The home support agency shall forward a complete investigation report to the Department within thirty (30) days of the occurrence or of the date that the home support agency first became aware of the incident.

9917.9 Each home support agency shall develop and implement a system of documenting complaints and incidents, which shall reflect all complaint, incident, and investigative activity for each year, and which shall include, for each complaint or incident:

(a) The name, address and phone number of the complainant or client involved in the incident, if known;

(b) If the complaint is anonymous, a statement so indicating;

(c) The date on which the complaint is received or the incident occurred;

(d) A description of the complaint or incident, including the names of any staff involved;

(e) The date on which the investigation is completed;

(f) Whether the complaint is substantiated; and

(g) Any subsequent action taken as a result of the complaint or incident, and the date on which the action was taken.

9917.10 Each home support agency shall report any action taken by, or any condition affecting the fitness to practice of, a registered nurse or home health aide that might be grounds for enforcement or disciplinary action under HORA or Home Health Aide Regulations of Chapter 93 of Title 17 DCMR to the Department within five (5) business days of the home support agency's receipt of the relevant information.

9917.11 The Department may receive and investigate a complaint alleging violation of any provision of this chapter and may investigate any incident.

9917.12 Based on a licensee's or applicant's violation of any provision of this chapter, the Department may initiate an enforcement action which may include license denial, license suspension, license summary suspension, or license revocation.

9917.13 As an alternative to denial, suspension, or revocation of a license when a home support agency has numerous deficiencies or a serious single deficiency with respect to the standards established under this chapter, the Director may:

(a) Issue a provisional license if the home support agency is taking appropriate ameliorative action in accordance with a mutually agreed upon timetable; or

(b) Issue a restricted license that prohibits the home support agency from accepting new clients or delivering certain specified services that it would otherwise be authorized to deliver, if appropriate ameliorative action is not forthcoming.

9917.14 A provisional or restricted issued under this section may be granted for a period not exceeding ninety (90) days, and may be renewed no more than once.

9917.15 When a provisional or restricted license has expired the Department may choose to initiate enforcement action in accordance with this section.

9918 PERSONAL CARE SERVICES

9918.1 A home support agency may offer personal care services and shall employ qualified home health aides pursuant to 17 DCMR §§ 9300 *et seq* to perform those services.

9918.2 Each home health aide shall be supervised by a registered nurse. On-site supervision of personal care services shall take place at least once every ninety (90) days.

9918.3 The home support agency shall have an adequate number of registered nurses to supervise the implementation of personal care services.

9918.4 Personal care services may include the following:

(a) Basic personal care including bathing, grooming, dressing, and assistance with toileting;

(b) Assisting with incontinence, including bed pan use, changing urinary drainage bags, protective underwear, and monitoring urine input and output;

(c) Assisting the client with transfer, ambulation, and exercise as prescribed;

(d) Assisting the client with self-administration of medication;

(e) Reading and recording temperature, pulse, and respiration;

(f) Measuring and recording blood pressure, height, and weight;

(g) Observing, recording, and reporting the client's physical condition, behavior, or appearance;

(h) Meal preparation in accordance with dietary guidelines, and assistance with eating;

(i) Implementation of universal precautions to ensure infection control;

(j) Tasks related to keeping the client’s living area in a condition that promotes the client's health and comfort;

(k) Accompanying or transporting the client to medical and medically-related appointments, to the client's place of employment, and to recreational activities;

(l) Assisting the client at his or her place of employment;

(m) Shopping for items related to promoting the client's nutritional status and other health needs; and

(n) Providing companion services.

9919 COORDINATION OF SERVICES

9919.1 A home support agency shall develop and implement policies and procedures relating to:

(a) The delineation of services provided by the home support agency when the home support agency coordinates services within the home support agency or with another provider; and

(b) Notification to the client or client representative of the home support agency’s responsibilities to coordinate services when appropriate.

9919.2 Personnel providing services shall communicate with each other to assure their efforts effectively complement one another and support the objectives outlined in the client service plan.

9919.3 The client record or minutes of case conferences shall establish that effective interchange, reporting, and coordinated client evaluation and planning occurs.

9999 DEFINITIONS

9999.1 For the purposes of this chapter, the following terms shall have the meanings ascribed below:

Admission - A home support agency's acceptance of client to provide personal care services.

Business day - Monday through Friday between the hours of 8:00 am and 6:00 pm, excluding public holidays.

Business hours - The hours during the day in which business operations are commonly conducted in the operating office by the licensee.

Client - The individual receiving home support agency services as defined in this chapter.

Client record - A written account of all services provided to a client by the home support agency, as well as other pertinent information necessary to provide care.

Client representative - A person designated in writing by the client in the service agreement or a person acting in a representative capacity under a durable power of attorney, durable power of attorney for health care, or guardianship pursuant to District law, or other legal representative arrangement.

Client Service Coordinator - A registered nurse who is sufficiently qualified to provide general supervision and direction of the services offered by the home support agency and who has at least one (1) year administrative or supervisory experience in personal care, home health care, or related health programs.

Client service plan - A written plan developed by the registered nurse in agreement with the client or client representative, if applicable, that specifies the tasks that are to be performed by the aide primarily in the client's residence. The written plan specifies scope, frequency, and duration of services.

Companion services - Non-healthcare related services, such as cooking, housekeeping, errands, and social interaction.

Complaint - Any occurrence or grievance reported by a client or client representative related to the nature of the services provided by the home support agency.

Department - The District of Columbia Department of Health.

Director - The individual appointed by the governing body to act on its behalf in the overall management of the home support agency.

Full-time - Employment period by the home support agency, at minimum, during each of the home support agency's established business days.

Governing body - The individual, partnership, group, or corporation designated to assume full legal responsibility for the policy determination, management, operation, and financial liability of the home support agency.

Home health aide - A person who performs home health and personal care services, and who is qualified to perform such services pursuant to Chapter 93 (Home Health Aides) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations.

Home support agency - An entity licensed in accordance with this chapter that employs home health aides to provide personal care services to clients.

HORA – Health Occupations Revision Act.

Incident - Any occurrence that results in significant harm, or the potential for significant harm, to a client's health, welfare, or well-being. Incidents include an accident resulting in significant injury to a client, death, misappropriation of a client's property or funds, or an occurrence requiring or resulting in intervention from law enforcement or emergency response personnel.

License - Formal permission granted by the Department to act as a home support agency in accordance with law.

Licensee - The individual or entity to whom the Department has granted formal permission to act as a home support agency in accordance with law.

Modification of ownership and control - The sale, purchase, transfer or re-organization of ownership rights.

Medical Orders for Scope of Treatment (MOST) Form - A set of portable, medical orders on a form issued by the Department that results from a

client's or a client representative's informed decision-making with a health care professional pursuant to D.C Official Code §§ 21-2221 *et seq*.

Operating Office - The physical location at which the business of the home support agency is conducted and at which the records of personnel, clients, incidents, and complaints of the home support agency are stored either electronically or physically.

Personal care services - Services that are limited to individual assistance with or supervision of activities of daily living, companion services, homemaker services, reporting changes in client's condition, and completing reports. Personal care services do not include skilled services.

Registered nurse - An individual who is currently licensed to practice nursing under the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*.)

Service delivery notes - Documentation of the duties or tasks completed per shift by a home health aide, nursing supervision, and any other pertinent information related to the provision of services.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Paralegal Specialist, at Angli.Black@dc.gov, (202) 442-5977.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-101
October 22, 2019

SUBJECT: Reappointments and Appointment - United Planning Organization Board of Directors

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 the Economic Opportunity Act of 1964, approved August 20, 1964, Pub. L. 88-452; 78 Stat. 516, and the bylaws of the United Planning Organization, as amended on July 17, 2014, it is hereby **ORDERED** that:

1. The following persons are reappointed as mayoral representative members to the United Planning Organization Board of Directors (UPO) to serve a term to end October 23, 2022:

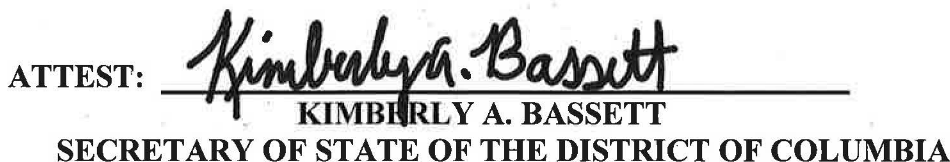
   a. **JEFFREY PAGE**;
   b. **JOSEPH VAUGHAN**; and
   c. **SHANTELLE WRIGHT**.

2. **LAFAYETTE BARNES**, is appointed as a mayoral representative member to the UPO, replacing Didier Sinisterra, to serve a term to end October 23, 2020.

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

MURIEL BOWSER
MAYOR

ATTEST:



KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-102
October 23, 2019

SUBJECT: Appointments — Child Fatality Review Committee

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 section 4604 of the Child Fatality Review Committee Establishment Act of 2001, effective October 3, 2001, D.C. Law 14-28; D.C. Official Code § 4-1371.04 (2019 Repl.), it hereby **ORDERED** that:

1. The following persons are appointed as members of the Child Fatality Review Committee to serve at the pleasure of the Mayor:

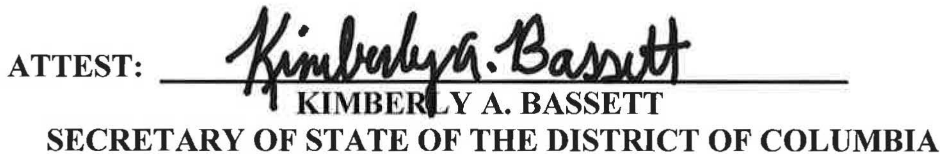
   a. **ALISON LOSEY,** replacing Yuliana Del Arroyo, as a representative of the Office of the State Superintendent of Education; and

   b. **DR. KRISTINZA GIESE**, replacing Roger Mitchell, as a representative of the Office of the Chief Medical Examiner.

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

MURIEL BOWSER
MAYOR

ATTEST:



KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-103
October 24, 2019

SUBJECT: Appointments — Opioid Fatality Review Board

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 2019-024, dated May 2, 2019, it is hereby **ORDERED** that:

1. **MORGAN MEDLOCK** is appointed as a representative of a hospital in the District member to the Opioid Fatality Review Board ("**Board**"), for a term to end June 15, 2021.

2. The following persons are appointed as members from community-based service providers to District residents to the Board, for a term to end June 15, 2021:

   a. **EDWIN CHAPMAN**;

   b. **CYNDEE CLAY**; and

   c. **ELISHA PETERSON**.

3. The following persons are appointed as District resident members, who are not employees of the District, who have been affected by a drug overdose death of an immediate family member or have been direct recipients of drug treatment services in the District, to the Board, for a term to end June 15, 2021:

   a. **MAURICE HARRISON**;

   b. **RHONDA L. JOHNSON**; and

   c. **KEVIN PETTY**.

4. The following individuals are appointed to the Board, to serve at the pleasure of the Mayor:

   a. **MARC DALTON**, as the representative from the Department of Behavioral Health;

b. **JOHN HAINES**, as the representative from the Metropolitan Police Department;

c. **LA'KISHA LACEY**, as the representative from the Fire and Emergency Medical Services Department;

d. **MADELEINE SOLAN**, as a representative from the Department of Human Services;

e. **CHIKARLO LEAK**, as a representative from the Office of the Chief Medical Examiner;

f. **BETH MYNETT**, as a representative from the Department of Corrections;

g. **ROBERT PEARSON**, as a representative from the Mayor's Office of Veteran's Affairs;

h. **PAM RILEY**, as a representative from the Department of Health Care Finance;

i. **JENIFER SMITH**, as Director of the Department of Forensic Sciences; and

j. **KENAN ZAMORE**, as a representative from the Department of Health.

5. **CHIKARLO LEAK** is appointed as the Chair of the Board, to serve at the pleasure of the Mayor.

6. **MORGAN MEDLOCK** is appointed as the Vice-Chair of the Board, to serve at the pleasure of the Mayor.

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

MURIEL BOWSER
MAYOR

ATTEST:
KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-104
October 24, 2019

SUBJECT: Appointments — Washington, DC Regional Planning Commission on Health and HIV

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) and (11) of the District of Columbia Home Rule Act of 1973, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) and (11) (2016 Repl.), and pursuant to the Mayor's Order 2019-073, dated August 21, 2019, it is hereby **ORDERED** that:

1. The following persons are appointed to the Washington, DC Regional Planning Commission on Health and HIV ("**Commission**") as representatives of the categories required by section 2602 of the Public Health Services Act (42 U.S.C. § 300ff-12(b)(2)), for terms to end June 1, 2020:

    a. **SARCIA ADKINS**;
    b. **FARIMA CAMARA**;
    c. **MISTY CARNEY**;
    d. **MELVIN CAUTHEN**;
    e. **TRACI DEAN**;
    f. **PETER DEMARTINO;**
    g. **DOUG FOGAL**;
    h. **JASMINE FORD**;
    i. **LYNN FORMAN**;
    j. **ANA GOMEZ**;
    k. **KENYA HUTTON**;
    l. **RAMATOULAYE KEITA**;
    m. **LENORA MCCLAIN**;
    n. **BETELHEM MEKONNEN**; and
    o. **JENNIFER ZOERKLER**.

2. The following persons are appointed to the Commission as representatives of the categories, as required by section 2602 of the Public Health Services Act (42 U.S.C. § 300ff-12(b)(2)), for terms to end June 1, 2021:

    a. **LAKISA BLOCKER**;
    b. **SHARON COKER**;

c. **MACKENZIE COPLEY**;
d. **DEMARC HICKSON**;
e. **DAVID HUGHES;**
f. **JENNE MASSIE**;
g. **GERALD PADMORE**;
h. **ALTMANN PANNELL**;
i. **NATELLA RAKHMANINA**;
j. **ANDREW TORRE**; and
k. **JANE WALLIS**.

3. **KALEEF MORSE** is appointed to the Commission as a voting representative of the District of Columbia Department of Health, to serve at the pleasure of the Mayor, and shall serve as Government Co-Chair of the Commission at the pleasure of the Mayor.

4. **MICHAEL KHARFEN** is appointed to the Commission as a non-voting government member representing the District of Columbia Department of Health HIV Prevention Division, to serve at the pleasure of the Mayor.

5. The following persons are appointed to the Commission as public members, for terms to end June 1, 2020:

   a. **NATHANIEL BAKER-HOLLEY**;
   b. **WALLACE CORBETT**; and
   c. **JULIO FONSECA**.

6. The following persons are appointed to the Commission as public members, for terms to end June 1, 2021:

   a. **DERRICK COX**;
   b. **DENNIS MCBRIDE**;
   c. **RE'GINALD SHAW-RICHARDSON**;
   d. **CHARLES SHAZOR**;
   e. **HARIS UYOUKO**; and
   f. **ANTONIO WASHINGTON.**

7. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to May 31, 2018.

MURIEL BOWSER
MAYOR

ATTEST:
KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-105
October 28, 2019

SUBJECT: Delegation — Authority Pursuant to D.C. Law 16-290, the Film DC Economic Incentive Act of 2006

ORIGINATING AGENCY: Office of the Mayor

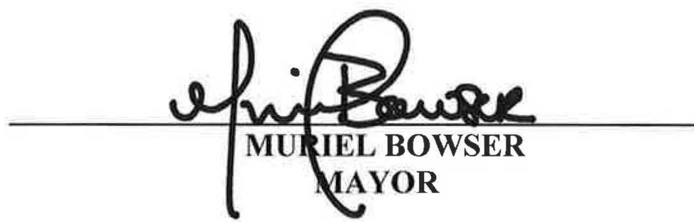
By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2016 Repl.), and pursuant to the Film DC Economic Incentive Act of 2006, effective March 14, 2007, D.C. Law 16-290; D.C. Official Code § 2-1204.11 *et seq.* (the "**Act**"), it is hereby **ORDERED** that:

1. The Director of the Office of Cable Television, Film, Music, and Entertainment ("**Director"**) is delegated the Mayor's authority under the Act.

2. The authority delegated herein may be further delegated to subordinates under the jurisdiction of the Director.

3. This Order supersedes all previous Mayor's Orders to the extent of any inconsistency therein.

4. **EFFECTIVE DATE:** This Order shall become effective *nunc pro tunc* to February 26, 2015.



MURIEL BOWSER
MAYOR

ATTEST:

KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-106
October 28, 2019

SUBJECT: Designation - Auditorium at Duke Ellington School of the Arts as Dave Chappelle Auditorium

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(4) and (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(4) and (11) (2016 Repl.), it is hereby **ORDERED** that:

1. The auditorium within the Duke Ellington School of the Arts ("**School**") is designated the Dave Chappelle Auditorium in honor of a distinguished alumnus of the School.

2. The Department of General Services shall install such signage at the School as is appropriate to commemorate this designation.

3. The District of Columbia Public Schools shall work with the School and its affiliated entities to provide appropriate publicity for this designation.

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

MURIEL BOWSER
MAYOR

ATTEST:
KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

OFFICE OF ADMINISTRATIVE HEARINGS

DISTRICT OF COLUMBIA ADVISORY COMMITTEE

PUBLIC NOTICE OF MEETING

In accordance with D.C. Code § 2-576(1), the Advisory Committee to the Office of Administrative Hearings hereby gives notice that it will meet on Thursday, October 24, 2019 at 12:00 pm. The meeting will be held at the following location:

Boardroom
Board of Ethics and Government Accountability
441 Fourth Street NW, Suite 540 South
Washington, DC 20001

For further information, please contact Shauntinique Steele at nikki.steele@dc.gov or 202-741-5303.

AGENDA

I. **Welcome and Call to Order**

II. **Introductions**

III. **Approval of the Minutes**

IV. **Vote to Approve Transmission**

V. **Remarks from the Chief ALJ**

VI. **Old Business**

VII. **New Business**

VIII. **Adjournment**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
AGENDA FOR APPROVAL TO RESCIND 405.1 AND 404.2 STATUS

WEDNESDAY, NOVEMBER 6, 2019 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Request to Rescind Approval of 405.1 Establishment due to failure to renew license. ANC 1B. SMD 1B10. ***Tipsy Peacock,*** 2915 Georgia Avenue NW, Retailer CT, License No. 094764.

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2. Request to Rescind Approval of 405.1 Establishment due to failure to renew license. ANC 6E. SMD 6E02. ***Yard and Toast,*** 1541 7th Street NW, Retailer CT, License No. 101636.

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3. Request to Rescind Approval of 405.1 Establishment due to failure to renew license. ANC 5E. SMD 5E06. ***The Darkroom,*** 207 Florida Avenue NW, Retailer CT, License No. 103803.

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4. Request to Rescind Approval of 405.1 Establishment due to failure to renew license. ANC 5D. SMD 5D01. ***Escape Restaurant and Lounge,*** 2040 West Virginia Avenue NE, Retailer CT, License No. 105812.

***In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, NOVEMBER 6, 2019
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: James Short, Bobby Cato, Rema Wahabzadah, Rafi A. Crockett

Protest Hearing (Status) **9:30 AM**
Case # 19-PRO-00101; Town2.0, LLC, t/a (To Be Determined), 1001 North Capitol Street NE, License #114559, Retailer CN, ANC 6C
Application for a New License

Protest Hearing (Status) **9:30 AM**
Case # 19-PRO-00102; Balkan Concepts, LLC, t/a Ambar, 523 8th Street SE License #90240, Retailer CR, ANC 6B
Substantial Change (Request to Expand to the Third Floor with 56 Additional Seats. Total Occupancy Load 140 to 196)

Show Cause Hearing (Status) **9:30 AM**
Case # 18-CMP-00173; Linda & A, Inc., t/a The House, 3530 Georgia Ave NW License #1686, Retailer CN, ANC 1A
Permitted Nude Dancers in the Establishment, Permitted Employees to Engage in Sexual Acts at the Establishment

Show Cause Hearing (Status) **9:30 AM**
Case # 19-CMP-00072; District Taco, LLC, t/a District Taco, 1309 F Street NW, License #90757, Retailer DR, ANC 2C
No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**
Case # 19-AUD-00037; 1606 K Street, LLC, t/a Fuel Pizza & Wings, 1606 K Street NW, License #88452, Retailer CR, ANC 2B
Failed to File Quarterly Statements

Board's Calendar
November 6, 2019

Show Cause Hearing (Status) **9:30 AM**
Case # 19-AUD-00039; 600 F D.C., LLC, t/a Fuel Pizza & Wings, 600 F Street NW, License #88727, Retailer CR, ANC 2C
Failed to File Quarterly Statements

Show Cause Hearing (Status) **9:30 AM**
Case # 19-CMP-00023; Union Kitchen, LLC, t/a Union Kitchen, 1924 8th Street NW, License #111996, Retailer B, ANC 1B
Permitted the Consumption of Alcohol Beverages on the Licensed Premises Under an Off-Premises License

Show Cause Hearing* **10:00 AM**
Case # 19-CMP-00061; Café Europa, t/a LeDesales, 1725 De Sales Street NW License #60754, Retailer CR, ANC 2B
No ABC Manager on Duty

Show Cause Hearing* **10:00 AM**
Case # 18-CMP-00112; Desperado Pizza, LLC, t/a Desperados Pizza, 1342 U Street NW, License #84731, Retailer CT, ANC 1B
Operating After Hours

Show Cause Hearing* **11:00 AM**
Case # 19-CMP-00076; The Elroy Bar, LLC, t/a The Elroy, 1423 H Street NE License #112289, Retailer CT, ANC 6A
Failed to Obtain a Summer Garden Endorsement

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

Protest Hearing* **1:30 PM**
Case # 19-PRO-00095; Cornerstone Bar Group, LLC, t/a The Pub and the People, 1648 North Capitol Street NW, License #94086, Retailer CT, ANC 5E
Substantial Change (Expansion to the Basement Space and Requesting an Increase in Occupancy)

Protest Hearing* **1:30 PM**
Case # 19-PRO-00050; Betty's Gojo Restaurant and Lounge, LLC, t/a Betty's Gojo, 7616 Georgia Ave NW, License #102500, Retailer CR, ANC 4A
Application to Renew the License

Board's Calendar
November 6, 2019
Protest Hearing* **4:30 PM**
Case # 19-PRO-00098; GLO-Lalibela Ethiopia Restaurant & Lounge, 1608 7th Street NW, License #104701, Retailer CR, ANC 6E
Application to Renew the License

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

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA - CLASS B LICENSEES

WEDNESDAY, NOVEMBER 6, 2019
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The ABC Board will be cancelling the following licenses for the reasons outlined below:

ABRA-082766 – **Mark's Market** – Retail - Grocery – B - 3933 14TH ST NW
[Licensee did not pay their third year payment.]

ABRA-091196 – **Georgia Line Convenience Store** – Retail - Grocery – B - 5125 GEORGIA AVE NW
[Licensee did not pay their third year payment.]

ABRA-101367 – **A & S Grocery** – Retail - Grocery – B - 4748 SHERIFF RD NE
[Licensee did not pay their third year payment.]

ABRA-102578 – **Soapstone Market** – Retail - Full Service Grocery – B - 4465 CONNECTICUT AVE NW
[Licensee did not pay their third year payment.]

ABRA-103721 – **Wine Advise** – Wholesaler – B - 2820 PENNSYLVANIA AVE NW
[Licensee did not pay their third year payment.]

ABRA-105815 – **The Wine Outlet** – Beer and Wine – B - 3210 Grace ST NW, #150
[Licensee did not pay their third year payment.]

ABRA-107325 – **Anchor** – Retail - Class B – B - 709 Wharf ST SW
[Licensee did not pay their third year payment.]

ABRA-108439 – **Gee's Market** – Retail - Class B – B - 3583 WARDER ST NW
[Licensee did not pay their third year payment.]

ABRA-108479 – **Food 7 Store** – Retail - Grocery – B - 1830 BENNING RD NE
[Licensee did not pay their third year payment.]

ABRA-109402 – **Open Door Market** – Beer and Wine – B - 2160 CALIFORNIA ST NW
[Licensee did not pay their third year payment.]

ABRA-110414 – **Tap Rebels** – Internet – B - 1701 FLORIDA AVE NW
[Licensee did not pay their third year payment.]

ABRA-111181 – **Dubai Market** – Beer and Wine – B - 3443 14TH ST NW
[Licensee did not pay their third year payment.]

ABRA-112240 – **My Houseland** – Wholesaler – B - 301 New York AVE NE
[Licensee did not pay their third year payment.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA - C LICENSEES

WEDNESDAY, NOVEMBER 6, 2019
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The ABC Board will be cancelling the following licenses for the reasons outlined below:

ABRA-000785 - **Dan's Cafe** – C **-** Tavern – 2315 18TH ST NW
[Licensee Did Not Renew.]

ABRA-009267– **Jr's Bar and Grill** – C **-** Tavern – 1519 17TH ST NW
[Licensee Did Not Renew.]

ABRA-060380– **Twin Jazz** – C **-** Tavern – 1344 U ST NW
[Licensee Did Not Renew.]

ABRA-070520– **Billy Goat Tavern & Grill** – C **-** Tavern – 500 NEW JERSEY AVE NW
[Licensee Did Not Renew.]

ABRA-071088– **MPIRE Club** – C **-** Nightclub – 1819 M ST NW
[Licensee Did Not Renew.]

ABRA-079568– **Room 11** – C **-** Tavern – 3234 11TH ST NW
[Licensee Did Not Renew.]

ABRA-081479– **French Bistro Bistro B Lounge** – C **-** Tavern – 1727 CONNECTICUT AVE NW
[Licensee Did Not Renew.]

ABRA-082211– **Maple** – C **-** Tavern – 3418 11TH ST NW
[Licensee Did Not Renew.]

ABRA-083919– **Dirty Martini Inn Bar/Dirty Bar** – C **-** Nightclub – 1223 CONNECTICUT AVE NW

[Licensee Did Not Renew.]

ABRA-084731– **Desperados Pizza** – C **-** Tavern – 1342 U ST NW
[Licensee Did Not Renew.]

ABRA-086141– **Lola's** – C **-** Tavern – 711 8TH ST SE
[Licensee Did Not Renew.]

ABRA-086384– **Bar Roubaix** – C **-** Tavern – 1400 IRVING ST NW
[Licensee Did Not Renew.]

ABRA-087106– **Larrys Lounge** – C **-** Tavern – 1840 18th ST NW
[Licensee Did Not Renew.]

ABRA-088333– **The Pinch** – C **-** Tavern – 3548 14TH ST NW
[Licensee Did Not Renew.]

ABRA-088603– **Impala Cantina Y Taqueria** – C **-** Tavern – 1358 H ST NE
[Licensee Did Not Renew.]

ABRA-088772– **Smoke & Barrel** – C **-** Tavern – 2471 18TH ST NW
[Licensee Did Not Renew.]

ABRA-090196– **Civil** – C **-** Tavern – 5335 WISCONSIN AVE NW
[Licensee Did Not Renew.]

ABRA-091276– **Kabin** – C **-** Tavern – 1337 CONNECTICUT AVE NW
[Licensee Did Not Renew.]

ABRA-091646– **Petworth Citizen** – C **-** Tavern – 829 UPSHUR ST NW
[Licensee Did Not Renew.]

ABRA-092705– **Sandovan Restaurant & Lounge** – C **-** Tavern – 4809 GEORGIA AVE NW
[Licensee Did Not Renew.]

ABRA-094011– **Steel Plate** – C **-** Tavern – 3523 12th ST NE
[Licensee Did Not Renew.]

ABRA-094107– **Halftime Sports Bar** – C **-** Tavern – 1427 H ST NE
[Licensee Did Not Renew.]

ABRA-094424– **Smith Public Trust** – C **-** Tavern – 3514 12th ST NE
[Licensee Did Not Renew.]

ABRA-095107– **The Pitch** – C **-** Tavern – 4015 GEORGIA AVE NW
[Licensee Did Not Renew.]

ABRA-095913– **The Sovereign** – C **-** Tavern – 1206 WISCONSIN AVE NW
[Licensee Did Not Renew.]

ABRA-097687– **Philos Mezze & Wine Bar** – C **-** Tavern – 401 MASSACHUSETTS AVE NW
[Licensee Did Not Renew.]

ABRA-098584– **Broccoli Bar** – C **-** Tavern – 1817 7th ST NW
[Licensee Did Not Renew.]

ABRA-099536– **The Manor** – C **-** Tavern – 1327 Connecticut AVE NW
[Licensee Did Not Renew.]

ABRA-099949– **Sugar Factory** – C **-** Tavern – 50 MASSACHUSETTS AVE NE
[Licensee Did Not Renew.]

ABRA-100517– **District Anchor** – C **-** Nightclub – 1900 M ST NW
[Licensee Did Not Renew.]

ABRA-104987– **Chatter** – C **-** Tavern – 5247 Wisconsin AVE NW
[Licensee Did Not Renew.]

ABRA-106136– **French Quarter Brasserie** – C **-** Tavern – 1544 9TH ST NW
[Licensee Did Not Renew.]

ABRA-108211– **Gonzaga College High School** – C **-** Tavern – 19 I ST NW
[Licensee Did Not Renew.]

ABRA-108950– **Engine Company 12 & Spark at 12** – C **-** Tavern – 1626 North Capitol ST NW
[Licensee Did Not Renew.]

ABRA-109420– **Sign of the Whale** – C **-** Tavern – 1825 M ST NW
[Licensee Did Not Renew.]

ABRA-109651– **The Caged Bird** – C **-** Tavern – 1723 CONNECTICUT AVE NW
[Licensee Did Not Renew.]

ABRA-109856– **Heller & Wilde** – C **-** Tavern – 2519 PENNSYLVANIA AVE NW
[Licensee Did Not Renew.]

ABRA-110889– **The Outsider** – C **-** Tavern – 1357 H ST NE
[Licensee Did Not Renew.]

ABRA-111822– **The Village Cafe** – C **-** Tavern – 1272 5TH ST NE
[Licensee Did Not Renew.]

ABRA-083133 – **Eye Bar/Garden of Eden** – C **-** Nightclub – 1716 I ST NW
[Licensee Did Not Renew.]

ABRA-000771 – **Macombo Lounge** – C – Nightclub – 5335 Georgia Avenue NW
[Safekeeping][Licensee did not renew.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, NOVEMBER 6, 2019 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 1A. SMD 1A04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Juanita's Restaurant***, 3521 14th Street NW, Retailer CT, License No. 091432.

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2. Review Request to Extend Safekeeping of License – Third Request. Original Safekeeping Date: 3/28/2018. ANC 6A. SMD 6A02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Smokin' Pig (Formerly ToucheLive)***, 1123 H Street NE, Retailer CT, License No. 104866.

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3. Review Request to Extend Safekeeping of License – Second Request. Original Safekeeping Date: 1/9/2019. ANC 6E. SMD 6E05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Capitol City Wine & Spirits***, 500 K Street NW, Retailer A Liquor Store, License No. 060423.

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4. Review Request to Expand the premises by increasing capacity on the existing licensed floors and also by adding the third floor to the licensed premises. The capacity of the Third Floor will be 325. The capacity of the Fourth Floor will be 315. The capacity of the Fifth Floor will be 335. Total Occupancy Load of the entire premises will increase from 100 to 975. ANC 2B. SMD 2B06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***WeWork***, 1875 K Street NW, Retailer CT, License No. 102006.

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5. Review Application for Change of Hours of Operations. ***Approved Hours of Operation:*** Sunday-Thursday 6:30am to 2am, Friday-Saturday 6:30am to 2:30am. ***Approved Hours of Alcoholic Beverage Sales and Consumption:*** Sunday-Thursday 11:30am to 2am, Friday-Saturday 11:30am to 2:30am. ***Proposed Hours of Operation:*** Sunday-Thursday 7:30am to 2am, Friday-Saturday 7:30am to 2:30am. ANC 6C. SMD 6C02. No outstanding

fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***The State Room***, 201 D Street NE, Retailer CT, License No. 060457.

***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. This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.**

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCY

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

VACANT: 5A04

Petition Circulation Period: **Monday, November 4, 2019 thru Monday, November 25, 2019**
Petition Challenge Period: Fri**day, November 29, 2019 thru Thursday, December. 5, 2019**

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
1015 Half Street, SE, Room 750
Washington, DC 20003

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

FRIENDSHIP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Friendship Public Charter School is seeking bids from prospective candidates to provide:

- **Catering and Event Support Services** -To included but not limited to, catering, décor, & furniture rental.

The full scope of work will be posted in a competitive Request for Proposal that can be found on FPCS website at http://www.friendshipschools.org/procurement/. Proposals are due no later than 4:00 P.M., EST, **Friday, November 15th, 2019.** No proposals will be accepted after the deadline. Questions can be addressed to ProcurementInquiry@friendshipschools.org

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DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Massage Therapy ("Board") hereby gives notice of a change in its regular meeting, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b) (2016 Repl.)).

The Board meets on the third Thursday of every other month. However, due to schedule conflict, the meeting previously scheduled for Thursday, November 21, 2019, will be held instead on Tuesday, November 12, 2019, from 10:00 AM – 4:30 PM. The meeting will be open to the public from 10:00 AM until 2:00 PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Act of 2010, D.C. Official Code § 2-574(b), the meeting will be closed from 2:00 PM to 4:30 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting will be the last meeting in 2019. The next meeting of the Board will be held as regularly scheduled on Thursday, January 16, 2019 from 1:00 PM – 4:00 PM.

The meetings will be held at 899 North Capitol Street, NE, Sixth Floor, Washington, DC 20002. Visit the Department of Health Events link at http://doh.dc.gov/events for additional information.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

IDENTIFYING PUBLIC HEALTH ISSUES FOR CONTINUING EDUCATION

The Director of the Department of Health (Director) hereby gives notice of the topics identified as public health priorities for the purpose of the continuing education required for the renewal, reactivation, or reinstatement of health professional licenses, certifications, or registrations, issued in accordance with D.C. Official Code § 3-1201.01 *et seq.*

With the goal of enhancing the protection and promotion of public health and in accordance with the rulemaking authority under D.C. Official Code § 3-1203.02(12), the Director has promulgated rules requiring licensed health professionals to complete at least ten percent (10%) of the their required total continuing education in the public health priorities of the District as determined and published every five (5) years or less frequently as deemed appropriate. The following topics have been identified as key public health priorities:

1. Responsible opioid prescribing and effective pain management;
2. Nutrition and obesity prevention;
3. Identifying and reporting abuse (child and adult), neglect (child and adult), human trafficking, and domestic violence;
4. Sexual health (including taking sexual history, discussing sexual experiences with patients, sexually transmitted diseases (including HIV/AIDS), HPV vaccines, connections to cancer, latent tuberculosis, safe sex, and birth control);
5. Ethics and appropriate patient interactions (i.e. boundaries, patient privacy, and communications including telehealth);
6. Smoking, vaping, and tobacco (including dangers, smoking cessation, and non-smoke tobacco products);
7. Preparing your patients for an emergency and handling vulnerable populations in an emergency;
8. Identifying impairment (physical or mental) in patients and providers (including complying with the Americans with Disabilities Act and the Occupational Safety and Health Act);
9. Vaccinations (including legal requirements and appropriate exemptions); and,
10. Implicit bias, cultural competence and Culturally and Linguistically Appropriate Services (CLAS) in health and health care.

Each health professional licensing board shall disseminate the identified subjects to its licensees via electronic communication and through publication on its web page. Since the goal of this list is to engage and educate health professionals in the promotion and protection of public health, it is intended to be liberally interpreted by each health professional licensing board with regulatory authority over each license type.

The requirement for public health continuing education may be found in specific professional rules under Title 17 of the District of Columbia Municipal Regulations (DMCR), such as section 7808.2 for audiologists (17 DCMR § 7808.2); section 6906.4 for psychologists (17 DCMR § 6906.4);

section 7008.4 for social workers (17 DCMR § 7008.4). This requirement may still be under rulemaking process for certain professions and is therefore not yet in effect for those professions. To determine whether public health continuing education is required for a specific license, visit specific professional licensing board web pages at www.dchealth.dc.gov or contact the Department of Health at (202) 442-5955. Health professional regulations may be found also at www.dcregs.dc.gov.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF PARKS AND RECREATION

NOTICE OF COMMUNITY GARDENING PARTNER GROUP COOPERATIVE AGREEMENT

DC Department of Parks and Recreation (DPR) will implement a revised Community Gardening Partner Group Cooperative Agreement (Gardening Agreement) which shall be used to standardize the rules and expectations of gardeners at the several community gardens on DPR property throughout the city. The general purpose of this agreement and the corresponding rules and guidelines is to promote and ensure fairness in the process for gardeners to obtain a gardening plot, provide rules governing how gardeners may maintain good standing in a community garden and to provide guidelines for the structure of each community gardening partner group. As part of this effort DPR is also noticing the Community Garden Bylaws Guidance and a new Garden Code of Conduct. Pursuant to the implementation of the Gardening Agreement, and the corresponding bylaws guidance and code of conduct, DPR will accept and review public comments on these documents.

Comments may be submitted online or through written correspondence. The Gardening Agreement is available for review and comment at: https://forms.gle/CDsFCW9wvPPEiA1X8. DPR Garden Code of Conduct and DPR Community Garden Bylaws Guidance are available for review at: https://dpr.dc.gov/page/community-gardens-frequently-asked-questions.

Interested persons may submit written comments within thirty (30) days of publication of this notice. The written comments must include the person's name, telephone number, affiliation, if any, mailing address, and statement outlining the issues or support surrounding the implementation of the gardening agreement, bylaws guidance and/or code of conduct. All relevant comments will be considered in implementing these changes. **Written comments postmarked after December1, 2019 will not be accepted.**

Address written comments to:

Department of Parks and Recreation
Kathleen Rehwaldt
Office of Partnerships and Development
Attn: Gardening Agreement Comments
1275 First Street, NE, 8th Floor
Washington, DC 20002

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY (NOFA)
FY'20 CLEAN TEAM GRANT FOR THE TRINIDAD SERVICE AREA

The Department of Small and Local Business Development (DSLBD) is soliciting applications from eligible applicants to manage a **DC Clean Team Program** in Trinidad Service Area.
The application submission deadline is Friday, November 1, 2019 at 12pm.

Through this grant, DSLBD will fund clean teams, which will achieve the following objectives.

- Improve commercial district appearance to help increase foot traffic, and consequently, the opportunity for customer sales.
- Provide jobs for DC residents.
- Reduce litter, graffiti, and posters, which contribute to the perception of an unsafe commercial area.
- Maintain a healthy tree canopy, including landscaping, along the corridor.
- Support Sustainable DC goals by recycling, mulching street trees, using eco-friendly supplies, and reducing storm water pollution generated by DC's commercial districts.

Eligible applicants are nonprofit organizations which are incorporated in the District of Columbia and businesses which are Certified Business Enterprises. All applicants must be current on all DC business licenses and permits.

DSLBD will **award** one grant for **each** of the following **service areas** (i.e., a total of seventeen grants). The size of the grant is noted for each district.

Service Area	Boundaries	Funding Amount
Trinidad	Trinidad Clean Team: Florida Avenue NE from West Virginia Ave NE to Montello Ave NE; Montello Ave NE from Florida Ave NE to Mt. Olivet Road NE; Mt. Olivet Road NE from Montello Ave NE to Trinidad Ave NE; Trinidad Ave NE from Mt. Olivet Road to Florida Ave NE.	$100,000

The **grant performance period** to deliver clean team services is October 1, 2019 through September 30, 2020. Grants may be renewed for a second performance period of October 1, 2020 through September 30, 2021.

The **Request for Applications** (RFA) includes a detailed description of clean team services, service area boundaries, and selection criteria. DSLBD posted the RFA on **Friday, October 18, 2019** at www.dslbd.dc.gov . Click on the *Our Division* tab, then *Commercial Revitalization*, and then *Solicitations and Opportunities* on the left navigation column.

The on-line application will open on **Friday, October 18, 2019.** To open an application, applicants must complete and submit an ***Expression of Interest*** via the website address included in the Request for Applications. DSLBD will provide access to the on-line application within three business days and will notify interested applicants via email.

Application Process: Interested applicants must complete an on-line application on or before **Friday, November 1, 2019 at 12pm.**

DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions and incomplete applications will not be forwarded to the review panel.**

Selection Criteria for applications will include the following criteria.

- Applicant Organization's demonstrated capacity to provide clean team or related services, and managing grant funds.
- Application Organization's prior experience with providing job training and social support services.
- Proposed service delivery plan for basic clean team services.
- Proposed service delivery plan for additional clean team services.

Selection Process: DSLBD will select grant recipients through a competitive application process that will assess the Applicant's eligibility, experience, capacity, service delivery plan, and, budget. Applicants may apply for one or more service areas by noting the number of service areas for which the applicant would like to be considered. DSLBD will determine grant award selection and notify all applicants of their status via email on or before **Tuesday, December 10, 2019.**

Schedule of Key Dates: Applicants should consider the Schedule of Key Dates when applying for an FY 2020 Clean Team Grant**.**

Scheduled Activities	Key Dates
DSLBD posted the RFA	October 18, 2019
Application Submission Deadline	**November 1, 2019 at 12 PM**
DSLBD will determine grant award selection and notify all applicants of their status via email on or before	December 10, 2019

Funding for this award is contingent upon funding availability from the DC Council. The NOFA does not commit the DSLBD to make an award. DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

The DSLBD reserves the right to accept or deny any or all applications if DSLBD determines it is in the best interest of DSLBD to do so. The Agency shall notify the applicant if it rejects that applicant's proposal. DLSBD may suspend or terminate an outstanding NOFA pursuant to its own grant-making rule(s) or any applicable federal regulation or requirement.

DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the RFA, or to rescind the NOFA.

DSLBD shall not be liable for any costs incurred in the preparation of applications in response to the NOFA. Applicant agrees that all costs incurred in developing the application are the applicant's sole responsibility.

DSLBD may conduct pre-award on-site visits to verify information submitted in the application and to determine if the applicant's facilities are appropriate for the services intended.

DSLBD may enter into negotiations with an applicant and adopt a firm funding amount or other revision of the applicant's proposal that may result from negotiations.

All applicants must attest to executing a DSLBD grant agreement as issued (sample document will be provided in the on-line application) and to starting services on **Tuesday, January 3, 2020.**

Questions must be sent to Reginald Grant at the Department of Small and Local Business Development at reginald.grant@dc.gov. All questions must be submitted in writing.

SOJOURNER TRUTH PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Curriculum Design Work

The Sojourner Truth Public Charter School requests proposals for curriculum design work that aligns to the school's unique approach to deep learning, Montessori, and project-based learning.

Full RFP document available by request. Proposals should be emailed as PDF documents no later than 5pm on Friday, November 1st, 2019. Contact: info@thetruthschool.org

SOJOURNER TRUTH PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Finance, Accounting, Human Resources, and Student Data Services

The Sojourner Truth Public Charter School requests proposals for Finance, Accounting, Human Resources, and Student Data services during the school's planning year.

Full RFP document available by request. Proposals should be emailed as PDF documents no later than 5pm on Friday, November 1st, 2019. Contact: info@thetruthschool.org

SOJOURNER TRUTH PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Team-Building and Outdoor Experiential Learning Cycles

The Sojourner Truth Public Charter School requests proposals for team-building for staff and outdoor experiential learning cycles for students, with a focus on character and social-emotional skill-building.

Full RFP document available by request. Proposals should be emailed as PDF documents no later than 5pm on Friday, November 1st, 2019. Contact: info@thetruthschool.org

TWO RIVERS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Low Voltage Vendor

Two Rivers Public Charter School is seeking low voltage vendor(s) to design and install infrastructure for the expansion of Two Rivers Middle School at the Young campus. This is a 29,000 SF expansion at the existing Young campus. For a copy of the RFP please email Gail Williams at procurement@tworiverspcs.org.

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, November 21, 2019 at 9:30 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. 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

	Item	Presenter
1.	Call to Order	Committee Chairperson
2.	AWTP Status Updates 1. BPAWTP Performance	Vice-President, Wastewater Ops
3.	Status Updates	Senior VP
4.	Project Status Updates	Director, Engineering & Technical Services
5.	Action Items - Joint Use - Non-Joint Use	Senior VP
6.	Water Quality Monitoring	Senior Director, Water Ops
7.	Action Items	Senior VP Senior Director, Water Ops Director, Customer Care
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 Tuesday, November 19, 2019 at 11:00 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. 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.	October 2019 Financial Report	Committee Chairperson
3.	Agenda for December 2019 Committee Meeting	Committee Chairperson
4.	Adjournment	Committee Chairperson

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19377 of The Boundary Companies and the Missionary Society of St. Paul the Apostle, as amended,[1] pursuant to 11 DCMR Subtitle X, Chapter 9 for special exceptions under the theoretical lot subdivision requirements of Subtitle C § 305.1, the roof structure requirements of Subtitle C § 1500.4, and the new residential development requirements of Subtitle U § 421, and pursuant to 11 DCMR Subtitle X, Chapter 10, variances from the vehicular access requirements and the RA-1 Zone development standards of Subtitle C § 305.3, to construct 60 row dwellings and a new clerical residential building in the RA-1 Zone at premises 3015 4th Street, N.E. (Square 3648, Lot 915).

HEARING DATE: April 25 and May 23, 2018
DECISION DATE: July 11, 2018

DECISION AND ORDER

Pursuant to notice, the Board of Zoning Adjustment (the "**Board**") held a public hearing on April 25 and May 23, 2018, to consider a self-certified application, as amended (the "**Application**"), filed by the Boundary Companies and the Missionary Society of St. Paul the Apostle (the "**Applicant**") This self-certified application was submitted on September 26, 2016. The Missionary Society of St. Paul the Apostle (also referred to herein as the "**Paulist Fathers**") is the current owner of the property at 3015 4th Street, N.E. (Square 3648, Lot 915) (the "**Property**") and the intended occupant of the clerical residence portion of the project. The Boundary Companies is the intended developer of the residential component of the project.

The Board conducted public hearings and considered the Application in accordance with the provisions of Subtitle Y of Title 11 of the D.C. Municipal Regulations (Zoning Regulations of 2016, the "**Zoning Regulations**," to which all references are made unless otherwise specified). For the reasons explained below, at its January 30, 2019 public meeting, the Board voted to **APPROVE** the Application, subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memorandum dated October 4, 2016, the Office of Zoning sent notice of the Application to the Office of Planning ("**OP**"); the District

[1] The caption has been modified to reflect an amendment to the Application. The Applicant initially requested special exceptions under Subtitle U § 421 and Subtitle C § 305.1, as well as an area variance from Subtitle C § 305.3 to allow multiple buildings – a residential development consisting of 12 new buildings, containing approximately 78 dwelling units – on a single lot utilizing theoretical lots with private vehicular access to each building, and area variances from the requirements of Subtitle C § 305.3 that the means of vehicular access must be at least 24 feet wide and that rear and side yards must be compliant based on the theoretical lot boundaries. (*See* Exhibits 1, 4, 11.) The Application was amended when the Applicant's project was revised to propose 60 row dwellings and a new clerical residential building. (Exhibits 64, 64D.)

Department of Transportation ("**DDOT**"); Advisory Neighborhood Commission ("**ANC**") 5E, the ANC for the area within which the Property is located; and the single-member district ("**SMD**") representative for ANC 5E01 as well as to the Councilmember for Ward 5, the four at-large members, and the Chairman of the Council of the District of Columbia. By memoranda dated April 10, 2018, the Office of Zoning sent notice of the Application to the Department of Parks and Recreation and to the Office of the Deputy Mayor for Education.

Pursuant to Subtitle Y § 402.1, on October 7, 2016, the Office of Zoning mailed notice of the hearing to the Applicant, ANC 5E, and the owners of all property within 200 feet of the Property. Notice of the hearing was published in the *D.C. Register* on October 14, 2016. The hearing was originally scheduled for December 7, 2016. The Applicant requested four postponements of the public hearing in order to continue working with the community and the party in opposition requested one postponement of the public hearing, and the Board approved all postponement requests. The public hearing was scheduled for April 25, 2018. The Applicant confirmed by affidavit that it posted notice of the public hearing on the Property on April 9, 2018.

Public Hearing. The Board held a public hearing on the Application on April 25, 2018 and May 23, 2018. At the end of the May 23 hearing, the Board closed the record except for submissions providing a final set of plans, a response on certain issues, and a draft findings of fact and conclusions of law from the Applicant, and responses from the other parties. The Board scheduled a decision for July 11, 2018, when it deliberated and voted to approve the Application subject to conditions.

Party Status. The Applicant and ANC 5E were automatically parties in this proceeding. On November 22, 2016, the St. Paul's College Neighbors for Thoughtful Development ("**Neighbors for Thoughtful Development**" or "**NTD**"), a group of residents in the adjacent Chancellor's Row development, filed an application for party status in opposition to the Application. The Board granted NTD's request for party status on February 8, 2017.

Applicant's Case. The Applicant provided testimony and evidence from the Very Reverend Eric Andrews, C.S.P, a representative of the Paulist Fathers; Stephen Horne, a representative of the Applicant; Warren Ralston of W.C. Ralston Architects, residential architect for the project and an expert in architecture; John Edwards of Bonstra Haresign Architects, also an expert in architecture; Loren Helgason of Studio 39, an expert in landscape architecture; Kyle Oliver of VIKA Capitol, an expert in civil engineering; and Dan Van Pelt of Gorove/Slade Associates Inc., an expert in transportation engineering. (Transcript ("Tr.") of April 25, 2018 at 23-70; Tr. of May 23, 2018 at 6-21; 28-41; 51-61; 67-74.) The Applicant asserted that the Application satisfied the applicable requirements of the Zoning Regulations under Subtitle U § 421, Subtitle C § 305, Subtitle C § 1500.4, and Subtitle X § 901.2 for approval of the special exceptions, and under Subtitle X §1000.1 for approval of the variances.

With the Application, the Applicant proposed a development of 60 row houses and a new clerical residence for the Paulist Fathers (the "**Paulist Building**") at the Property. The Applicant

described the Property and its neighborhood context, described the architecture of the development and the planned use of the clerical residence building, detailed the constraints created by the characteristics of the Property, explained the planned landscaping of the planned development, and detailed the transportation review and traffic mitigation measures and commitments.

The Applicant asserted that the development would not adversely affect the use and enjoyment of nearby properties due to traffic, noise, design, or other objectionable conditions and that granting the special exceptions would be in harmony with the general purpose and intent of the Zoning Regulations and would not tend to adversely affect the use of neighboring property. The Applicant also argued that the Property was affected by exceptional conditions that created a practical difficulty for the development of the Property in strict compliance with the Zoning Regulations, specifically the requirements for width of vehicular ingress and egress and for lot occupancy, side yard, and rear yard. According to the Applicant, relief from those requirements would not create substantial detriment to the public good or impair the intent, purpose, and integrity of the Zone Plan. (Exhibits ("Ex.") 1-16, 62-62B, 63-64H, 85-85E.).

On May 9, 2018, in response to the Board's request at the initial public hearing, the Applicant filed additional information relating to the use of the Paulist Building, the easements associated with the project, tree preservation, final landscape plans, site sections illustrating grading and relationships to surrounding properties, and the inclusionary zoning ("**IZ**") units. (Ex. 170.) After the second hearing, at the Board's request the Applicant filed final plans, clarification on the affordable housing, and a draft order on June 28, 2018. (Ex. 192.)

<u>OP Report</u>. By reports dated April 13, 2018 and May 16, 2018, and through testimony at the public hearing, OP recommended approval of the Application. (Ex. 89, 179; April 25, 2018 Tr. at 172-177; May 23, 2018 Tr. at 23-25.) OP concluded that the Application satisfied all of the criteria for the requested special exceptions, in particular that the proposed development would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring properties, that the development would comply with the substantive intent and purpose the Zoning Regulations and would not have an adverse effect on the present character and future development of the neighborhood. With respect to the impact on neighboring properties, OP noted the separation of the planned development from Chancellor's Row (50 feet in the northern portion and 75 feet in the southern portion of the Property). OP also noted the compatibility of the planned development with the Chancellor's Row community design and the historic St. Paul's College Building. (Ex. 89.) In its supplemental report, OP noted its continued support for the project. (Ex. 179).

<u>DDOT Report.</u> By reports dated March 9, 2018 and April 20, 2018 and through testimony at the public hearing, the District Department of Transportation stated that it had no objection to the approval of the Application subject to certain conditions. (Ex. 73, 96; April 25, 2018 Tr. at 177-182; May 23, 2018 Tr. at 26-27.) On May 18, 2018, DDOT submitted a supplemental report expressing continued support of the Application and providing a revised set of conditions. (Ex.

182.) DDOT found that the Applicant had used sound methodology in its comprehensive transportation review ("**CTR**").

ANC Report. At a regularly scheduled and duly noticed public meeting held on May 16, 2017 with a quorum present, ANC 5E adopted a resolution in support of the Application, noting the Applicant's commitment to affordable housing and to making playground and open green space at the Property available for community use. (Ex. 51 and 53.) At the April 25th hearing, Edward Garnett, the ANC SMD commissioner testified regarding the ANC's support. (April 25, 2018 Tr. at 106-115.)

Party in opposition. The St. Paul's College Neighbors for Thoughtful Development testified in opposition at the public hearing and filed multiple documents into the record. Their testimony at the public hearing addressed concerns about: (1) the density of the project; (2) the placement of dwellings directly across from Chancellor's Row; (3) whether the Applicant's traffic review and CTR adequately addressed school traffic; (4) the loss of green space and trees for the benefit of the community; (5) the encroachment of traffic into the private streets of Chancellor's Row; (6) adverse impacts caused by the construction of the Applicant's project on Chancellor's Row; (7) promises to retain the subject property as open space that were made in the planned unit development ("**PUD**") proceeding that approved the development of Chancellor's Row; (8) the project's impacts on storm water management; (9) grading and topographical impacts of the project; and (10) the siting of inclusionary zoning units within the project. NTD also testified regarding a construction agreement it entered into with the Applicant for mitigation of construction-related impacts of the project. (Ex. 39, 181-181A; April 25, 2018 Tr. at 74-84; 85-89; 92-100; 102-104; May 23, 2018 Tr. at 22-23; 48-49; 61-67.) On July 10, 2018, NTD filed a letter restating their concerns regarding the project density, the location and clustering of IZ units, building and construction setbacks to adjacent homes, parking sufficiency, and traffic planning for the charter schools located on adjacent property. (Ex. 194.)

Persons in support. The Board heard testimony and received letters from persons in support of the Application, including the board of directors of Chancellor's Row (Ex. 102), subject to conditions, and Casey Trees. (Ex. 97.) The persons in support commented favorably on the development of housing at the Property, especially the provision of affordable dwelling units, the Applicant's revisions to the project in response to community concerns, especially with respect to pedestrian and vehicular traffic access and the preservation of green space, and the tree protection plan of the Project. (April 25, 2018 Tr. at 117-122; 131-137; Ex. 47, 48, 58, 61, 67, 97, 100, and 105.)

Persons in opposition. The Board heard testimony and received letters from persons in opposition to the Application. The persons in opposition stated concerns about issues relating to: (1) transportation, including the creation of additional demand for street parking, private street restrictions, and the Chancellor's Row streets not being wide enough for access; (2) green space, including the loss of open and green space, tree protection and its ability to last through construction, accessibility of green space due to religious nature of the owner, and the fact that

park space in Ward 5 is prioritized in the Comprehensive Plan; (3) the project's impact on Chancellor's Row, including the housing placement, the impact on private streets in Chancellor's Row, construction impacts on adjacent homes, storm water impacts resulting from a change the current storm water management on the project site, the narrow buffer between the project and Chancellor's Row, a request for an improved gate blocking access to Chancellor's Row, and increasing the number of homes subject to the construction mitigation agreement with the community; (4) the density of the project; (5) the development process, including objections that the subject property was promised as open space in a prior PUD, the piecemeal process of development including the establishment of the schools at the nearby historic St. Paul's College Building, that the Applicant had not been responsive to community concerns, and that the project was proceeding as a case before the Board as opposed to a PUD before the Zoning Commission; (6) impacts on the schools at the St. Paul's College Building, including the lack of access over private streets, construction impacts, loss of green play space, and removal of parking spaces, including handicapped spaces; (7) the use of the planned new Paulist Building and its location within the historic viewshed; and (8) matters relating to the nearby United States Conference of Catholic Bishops, including a slope easement, fences along the slope easement, drainage, and traffic concerns. (Ex. 17(2), 32, 37, 49, 50, 69, 74-78, 79(2), 80-84, 90-93, 95, 98, 99, 101, 103, 104, 111-123, 125-126, 128-137, 139-141, 143-169, 171-178, 186-187; April 25, 2018 Tr. at 122-172.)

FINDINGS OF FACT

1. The subject property is located at 3015 4th Street, N.E. (Square 3648, Lots 1070 and 1071) (the "**Property**").[2]

2. The Property is irregularly shaped and is currently unimproved except for a parking lot in the northeastern portion of the site. The lot area is approximately 241,600 square feet (5.5 acres).

3. The Property slopes from the interior of the site down toward 4th Street, with a change in grade of approximately 20 feet from east to west in vertical elevation to the western lot line.

4. The Property is bounded on the north by property used as the administrative offices by the United States Council of Catholic Bishops, housing approximately 300 employees using a parking lot of 220 spaces.

5. The Property is bounded on the west by 4th Street, N.E. Trinity College is located to the west of the Property across 4th Street.

[2] The Applicant initially described the Property as Lot 915 (*see* Ex. 1). Assessment and Taxation ("A&T") Lot No. 915 comprised A&T Lot 1067 (the Property) as well as A&T Lots 1068 and 1069. The latter two lots are the location of the St. Paul's College building and grounds and are under separate ownership. (Ex. 11.) The Property is now known as A&T Lots 1070 and 1071. (Ex. 170; April 25, 2018 Tr. at 23.)

6. Chancellor's Row, a development of 237 three- and four-story row dwellings, adjoins the Property to the east and south. Chancellor's Row was approved as a PUD and related Zoning Map amendment, from the R-5-A Zone District to the R-5-B Zone District, by Zoning Commission Order Nos. 07-27A (May 8, 2009) and 07-27A1 (August 5, 2011).

7. The St. Paul's College Building is also located to the east of the Property. The building was designated a historic landmark, and a protected viewshed extends from the building to cover part of the southern portion of the Property. The St. Paul's College Building, which contains more than 100,000 square feet of building area, now houses two charter schools: an elementary school, Lee Montessori, and a high school, Washington Leadership Academy.

8. The area surrounding the Property contains a mixture of residential and institutional buildings, including Trinity College to the west and several religious institutions to the north. The neighborhood to the south, zoned RF-1, is composed primarily of row dwellings. Two public recreation centers are located within a mile of the Property.

9. The Applicant proposes to develop the Property as a single lot utilizing theoretical lots with 60 row houses and a new building for use as a clerical residence known as the Paulist Building. The Application designated the row house lots as theoretical lots 1 through 60, and the Paulist Building site as theoretical lot 61. Theoretical lot 62 represented the open space on the Property not included within the row house lots or the Paulist Building site. (Ex. 85.)

10. Each row house will be an individual building for zoning purposes. The row houses will be grouped in "sticks" of two to ten dwellings oriented around landscaped areas, wooded areas, sidewalks, private roads, and driveways. Areas of open space will be provided between the new buildings and existing residences; the buffers will be at least 50 feet wide in the northeastern portion of the site and at least 75 feet in the southern portion. (Ex. 11, 64, 192.)

11. The row houses will be either 16 or 20 feet in width, and 42 feet in depth. Each row house will have a garage with either one or two parking spaces, accessible via a private alley at the rear of the dwelling. The building height of the row houses will not exceed the 40-foot maximum permitted as a matter of right. The 16-foot-wide row houses will be almost 36 feet in height; a roof structure, if present, will be almost nine feet in height. The 20-foot-wide row houses will be approximately 32 feet in height; a roof structure, if present, will be about 10 feet in height. (Ex. 64A1, 64A2, 64A3, 85)

12. Nine of the 60 row houses will be designated as inclusionary zoning units: three reserved for households earning 50 percent or less of the Washington DC median family income ("**MFI**"), three reserved for households earning 60 percent MFI or less, and three reserved for households earning 80 percent MFI or less. The applicant's proffer of IZ

units exceed the minimum required under Subtitle C, Chapter 10, both in terms of the number of units and the level of affordability. The IZ units will be distributed throughout the development substantially as shown in Exhibit 192C.

13. The row houses were designed to allow for the construction of a rear deck approximately 12 feet wide and 5 feet deep, at the option of the eventual owners of the dwellings.

14. The row houses – excluding those in areas labeled as Lots 1-7 and 23-28 in the Applicant's plans (Page C-05, Ex. 192B) – were designed to allow construction of a roof structure allowing access to a roof terrace. The roof structures, consisting of stairs and a landing (four feet wide and four feet deep), will provide access to a terrace approximately four feet wide and 22 feet long. The one-story roof structures will be either eight feet, 10 inches high (on the 16-foot-wide dwellings) or 10 feet in height (on the row houses 20 feet wide).

15. The row houses not designed to allow access to a roof terrace (*i.e.* on theoretical lots 1-7 and 23-28) will be those located closest to the neighboring Chancellor's Row development. Those row houses also will not have condensers on the roofs; their condensers will be placed either on the terrace level or on the garage side of those buildings in the private streets.

16. The two-story Paulist Building will be 37 feet, five inches in height and will comply with applicable use and development standards.[3] The building will contain approximately 22,828 gross square feet to house a maximum of 15 residents, with a garage providing approximately 18 parking spaces. The design of the building was approved by the Historic Preservation Review Board (HPA Case No. 18-101). The Paulist Building will be located in the southern portion of the Property, sited at least 75 feet from the neighboring Chancellor's Row residences. (Ex. 64, 64A10, 64A11, 85, 192.)

17. Access to the buildings in the Project will be provided via private streets and driveways. The main entrance driveway, 26 feet wide, will provide an entrance onto the Property from 4th Street, continuing to a main street, 24 feet wide, through the Property. Streets branching off the main street will be 20 feet in width. As proposed, the dimensions of the vehicular accessways in the Project will meet the applicable width and clearance requirements for fire access. The main street and sidewalks at the Property will be subject to a public access easement for vehicular and pedestrian travel. (Ex. 64, 170C, 192B.)

18. The Project will have an overall lot occupancy of approximately 32 percent and a floor area ratio ("**FAR**") of 0.93,[4] which is marginally more than the by-right 0.9 maximum

[3] Uses permitted as a matter of right in the RA-1 zone include clerical and religious group residences for no more than 15 persons pursuant to Subtitle U §§ 201.1, 301.1, and 401.1.

[4] The Applicant's calculations of development standards for the Project excluded the private streets from the lot area and assumed that all row houses on the individual theoretical lots would opt for rear deck additions. (Ex. 85.)

FAR and within the maximum 1.08 FAR allowed for IZ projects in the RA-1 zone.[5] The Paulist Building will have a lot occupancy of approximately 30 percent and 0.65 FAR.

19. Lot occupancy, FAR, and yard setbacks will vary on the theoretical lots occupied by the row houses. Lot occupancies will range from approximately 61 percent to 89 percent, while FAR will range from approximately 1.77 to 3.01. Rear yards will be as large as seven feet; in some cases, no rear yard will be provided. Side yards will be as large as 4.67 feet; in some cases, no side yard will be provided. (Ex. 192B.)

20. Approximately 2.2 acres (more than 95,000 square feet) of the Property will be devoted to green or landscaped space, particularly those areas along 4th Street and at the south of the Property. These areas, including spaces known as the Corner Park, the Verge, and Sylvan Grove, will be tree preserves and will be open to the public for recreational purposes. (Ex. 64, 192.)

21. The Applicant will execute a covenant ensuring that the common green and open areas at the Property will be maintained as public open space in perpetuity. (Exhibits 170C-20 – C-22 in Ex. 192B.)

22. The Property currently contains 74 trees, including 32 trees greater than 55 inches in circumference scattered throughout the Property. The Applicant plans to remove 39 trees, replacing them at a ratio of three new trees for every one tree removed, for a total of 117 new trees. The Project will preserve 18 of the 32 trees with a circumference over 55 inches, as well as 19 trees with a circumference of less than 55 inches. (Ex. 170, 192.) The Applicant proposed a tree preservation plan, including an inventory. (*see* Ex. 64H.)

23. The Applicant will install a new storm water management system at the Property. The existing system, a retention pond and related facilities, will be replaced with new underground vaults designed to handle the anticipated storm water for the collection areas consistent with the requirements of the District Department of Energy and Environment. (*see* Page C-10 in Exhibit 192B. (May 23, 2018 Tr. at 68-69.)

24. The Property and the immediately surrounding area are zoned RA-1.

25. The Resident Apartment (RA) zones permit urban residential development and compatible institutional and semi-public buildings. (Subtitle F § 100.1.) The RA zones are designed to be mapped in areas identified as moderate- or high-density residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F § 100.2.)

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[5] Subtitle C § 1002.3 authorizes twenty-percent (20%) bonus density for IZ projects above the maximum 0.9 FAR established for the RA-1 zone by Subtitle E § 302.1.

26. Provisions of the RA zones are intended to (a) provide for the orderly development and use of land and structures in areas characterized by predominantly moderate- to high-density residential uses, (b) permit flexibility by allowing all types of residential development; (c) promote stable residential areas while permitting a variety of types of urban residential neighborhoods; (d) promote a walkable living environment; (e) allow limited non-residential uses that are compatible with adjoining residential uses; (f) encourage compatibility between the location of new buildings or construction and the existing neighborhood; and (g) ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle F § 100.3.)

27. The RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached dwellings, row houses, and low-rise apartments. (Subtitle F § 300.2.) The purposes of the RA-1 zone are to (a) permit flexibility of design by permitting all types of urban residential development if they conform to applicable height, density, and area requirements and (b) permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones. (Subtitle F § 300.1.)

CONCLUSIONS OF LAW

1. As amended, the Application seeks (i) a special exception under Subtitle U § 421 to allow a new residential development in the RA-1 Zone District; (ii) a special exception under Subtitle C § 305 to allow multiple buildings on a single lot utilizing theoretical lots; (iii) a special exception under Subtitle C § 1500.4 to allow roof structures on row dwellings, and (iv) area variances from Subtitle C § 305.3 for relief from the requirement that a means of vehicular ingress and egress to a principal building must be at least 24 feet in width and the requirement that lot occupancy, side yards, and rear yards be compliant based on the theoretical lot boundaries.

2. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property, subject to specific conditions. *See* Subtitle X § 901.2.

3. Under the provisions of Subtitle U § 421, special exception approval is required for all new residential developments in the RA-1 zone, except those comprising all one-family detached or semi-detached dwellings. Subtitle U § 421.1. The Board is directed to consider the adequacy of the area schools, both existing and planned, to accommodate the numbers of students that can be expected to reside in the project, as well as the adequacy

of the public streets, recreation, and other services to accommodate the residents that can be expected to reside in the project. The Application was referred to the Office of Planning and other agencies for comment and recommendation on the site plan, the arrangement of buildings and structures, and the provision of light, air, parking, recreation, landscaping, and grading as they relate to the surrounding neighborhood as well as the relationship of the proposed project to public plans and projects. To facilitate review of the proposal, the Applicant submitted site plans and sets of typical floor plans and elevations, a grading plan (existing and final), a landscaping plan, and plans for all new rights-of-way and easements as required by Subtitle U § 421.4.

4. Pursuant to Subtitle C § 305, the Board may allow, by approval as a special exception, multiple primary buildings on a single record lot in the RA-1 zone, subject to certain requirements. Subtitle C § 305.1. Satisfactory evidence must be submitted to demonstrate that all applicable requirements are met based on a plan of theoretical subdivision where individual theoretical lots serve as boundaries for assessment of compliance with the Zoning Regulations. Subtitle C § 305.2. The proposed development must comply with the substantive intent and purpose of the Zoning Regulations and must not be likely to have an adverse effect on the present character and future development of the neighborhood. Subtitle C § 305.6. To assist the Board's consideration, an applicant is required to submit detailed information about the proposal (*see* Subtitle C § 305.4), and the Application must be referred to the Office of Planning for coordination, review, and report on specified issues, including the relationship of the proposed development to the overall purpose and intent of the Zoning Regulations as well as a range of planning considerations and the findings, considerations, and recommendations of other District government agencies. Subtitle C § 305.5.

5. Based on the findings of fact, the Board concludes that the Application satisfies the requirements of Subtitle U § 421 and Subtitle C § 305, with approval made subject to conditions necessary to protect the overall purpose and intent of the Zoning Regulations. *See* Subtitle C § 305.7. The Applicant proposes a new residential development comprising 60 row houses and one clerical residence on a single record lot utilizing theoretical lots. Except with respect to those matters that are the subject of the Applicant's request for variance relief, relating to rear yard and side yard setbacks of the row houses and to the width of each means of vehicular access to any principal building (discussed below), the proposal meets the development standards required by the Zoning Regulations.

6. The Property is a large undeveloped area that is bordered on three sides by existing residences and a building housing two schools. The Applicant described the difficulties faced in creating uniformly shaped building lots on the Property due to its irregular shape and changes in grade as well as the number of significant trees on the site. The Project was designed to mirror surrounding development with regard to lot size and unit configuration while preserving a considerable number of trees, establishing a defined

viewshed from 4th Street to the St. Paul's College Building, providing sufficient buffers in the northeastern and southern portions of the Property between the Project and Chancellor's Row, and identifying an appropriate location for the new Paulist Building. The Office of Planning concurred that the layout of the Project, including the reduced rear and side yards, allowed for a "compact development that provides more publicly accessible open space, helps to ensure preservation of trees along 4th Street, and respects the existing historic landmark building that is to the east of the Project site." (Ex. 89.)

7. The Board notes that the Applicant met with the D.C. Department of Fire and Emergency Services to discuss the Project and incorporated that agency's comments into the final design (*see* Ex. 64). The Office of Planning reviewed enrollment data published by D.C. Public Schools and concluded that nearby public and charter schools presently have additional capacity to accommodate the numbers of students who might be expected to reside in the Project. The Applicant's proposal will comply with applicable requirements relating to Inclusionary Zoning (as confirmed by OP with the Department of Housing and Community Development) as well as requirements relating to storm water management and the Green Area Ratio. The District Department of Transportation had no objection to approval of the Application, subject to conditions that have been addressed in this Order.

8. The Applicant also requested a special exception to allow roof structures (a stair and landing) on the row houses to provide access to roof terraces, excluding the row houses in specified locations closest to Chancellor's Row. In accordance with Subtitle C § 1500.4, a penthouse may be permitted on the roof of a row house so long as the penthouse (a) is no more than 10 feet in height and contains no more than one story and (b) contains only stair or elevator access to the roof, and a maximum of 30 square feet of storage space ancillary to a rooftop deck. As demonstrated in Findings of Fact No. 14 and 15, the Applicant's proposal meets the requirements for approval under Subtitle C § 1500.4.

9. The Board concludes, consistent with Subtitle X § 901.2, that approval of the three requested special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Project will satisfy applicable development standards, except those for which variance relief was requested, and will be consistent with use requirements in the RA-1 zone. The Project will be an urban residential development in keeping with provisions of the RA zones intended to provide for the orderly development and use of land in an area characterized by predominantly moderate- to high-density residential uses, to promote stable residential areas and a walkable living environment, and to encourage compatibility between the location of new buildings and the existing neighborhood.

10. The Board notes OP's conclusion that the Project, which at 0.93 FAR is well within the maximum 1.08 FAR allowed for IZ projects in the RA-1 zone, "reflects an acceptable density for development of the site, which is consistent with the low- to moderate-density development … contemplated in the RA-1 zone." The Office of Planning also

commented favorably on the Applicant's efforts to preserve healthy, existing mature trees, and to site the new Paulist Building and row houses to respect the viewshed of the historic St. Paul's College Building. (Ex. 89.) The Board was not persuaded by testimony in opposition to the Application that the proposed density of the Project would be excessive for its location, or that the Property had been reserved as open space in the PUD approval for the Chancellor's Row development.

11. The Board also concludes, consistent with Subtitle X § 901.2, that approval of the requested special exceptions, as finally revised and subject to the conditions adopted in this Order, will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. The Board notes especially that the Project is consistent with the use requirements of the RA-1 zone, and that the development as a whole will comply with applicable development standards including floor area ratio, green area ratio, and storm water management requirements. In developing the Project, the Applicant will retain many existing trees and provide suitable landscaping, including a large number of new trees. The open spaces maintained on the Property will include significant buffer areas between the new buildings and existing residences. The Project will not create adverse traffic impacts in light of the easements maintaining public access to the private streets and sidewalks, and the provision of adequate parking.

12. Variance requests. Where multiple principal buildings are proposed on a single record lot utilizing theoretical lots, the Zoning Regulations prescribe certain development standards applicable to the theoretical lots, including that (a) the side and rear yards of a theoretical lot must be consistent with the requirements of the zone and (b) each means of vehicular ingress and egress to any principal building must be at least 24 feet in width, exclusive of driveways. Subtitle C § 305.3(a), (b). The Applicant requested area variance relief from these requirements.[6] The Board is authorized under Section 8 of the Zoning Act (D.C. Code § 6-641.07(g)(3)) to grant area variances, as provided in the Zoning Regulations, where, by reason of extraordinary or exceptional situation or condition of a specific piece of property, the strict application of the Zoning Regulations would result in a practical difficulty for the applicant, provided that the relief will not cause substantial detriment to the public good or substantial impairment of the intent, purpose, and integrity of the Zoning Regulations and Zoning Map. Subtitle X §§ 1000.1, 1002.1.

13. The Board concurs with the Applicant and the Office of Planning that the Property is affected by exceptional conditions due to the shape and topography of the Property, its significant tree cover, and the presence of a protected viewshed over a portion of the site. These factors constrain the development potential of the Property.

[6] Because the Paulist Building will comply with applicable development standards, the Applicant requested variance relief from the side yard and rear yard requirements only with respect to the theoretical lots created for the new row houses.

14. The strict application of the Zoning Regulations would cause practical difficulty to the Applicant especially by precluding the siting of the row houses in a way that would maximize the preservation of open space, including buffers separating the Project from existing development, as well as the retention of trees on the Property. The Applicant explained that the configuration of the new buildings in the Project was designed to accommodate the topography of the site, and measures intended to increase the size of side and rear yards on the theoretical lots would require regrading of the site and the use of additional retention walls.

15. Approval of the requested area variances will not cause substantial detriment to the public good, or substantially impair the zone plan. For the reasons discussed above, the Board finds that the Project is in harmony with the general purpose and intent of the Zoning Regulations and is not likely to adversely affect the use of neighboring property. The requested relief from development standards is not inconsistent with the purposes of the RA-1 zone but will allow the Applicant to provide greater open space in the development as a whole. The requested relief from vehicular access requirements will also facilitate better site design without impinging on necessary access for vehicles. The private streets will be used primarily for access to buildings in the Project, without direct connection to the public street network and therefore creating minimal impact on traffic in the neighboring area.

16. The Board is required to give “great weight” to the recommendation of the Office of Planning. D.C. Official Code § 6-623.04 (2012 Repl.). For the reasons discussed above, the Board concurs with OP’s recommendation that the Application should be approved with conditions.

17. The Board is also 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)(3)(A) (2012 Repl.)). In this case ANC 5E adopted a resolution in support of the Application, stating the ANC’s priorities in reviewing the Project as the provision of additional housing for a growing community, including an affordable component, the preservation of as much green space as possible as former institutional uses are converted to residential uses, and the minimization of the impact of new development on the existing community during and after construction. ANC 5E noted the Applicant’s IZ commitment, its tree preservation plan, and its offer to allow “the greater community” to use the playground and open green space for recreation, and also stated that a planned buffer between the project and Chancellor’s Row (which was increased after the ANC issued its report) would limit the impact of the project. (Ex. 53.) For the reasons discussed above, the Board concurs with the ANC’s conclusions.

DECISION

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions under the requirements for new residential development under Subtitle U § 421, the theoretical lot subdivision requirements of Subtitle C § 305.1, and the roof structure requirements of Subtitle C § 1500.4, as well as for variances from the vehicular access requirements and the RA-1 development standards of Subtitle C §305.3 to allow 60 row dwellings and a new clerical residential building in the RA-1 Zone at 3015 4th Street N.E. (Square 3648, Lots 1070 and 1071).

Accordingly, it is **ORDERED** that the Application is **GRANTED** subject to the following **CONDITIONS**:

1. The Applicant shall build the project in accordance with the plans submitted as Exhibit 192B in the record.[7]
2. The Applicant shall landscape the Property in accordance with the landscaping plans submitted as Pages L.01 – L7.05 in Exhibit 192B in the record and shall retain, preserve and replant trees as forth on Pages C-14 and C-14A in Exhibit 192B in the record.
3. The Applicant shall implement the following recommendations from DDOT:
    a. Design all private streets to DDOT's 2019 DEM standards where they connect with the public street network;
    b. Provide 6-foot wide sidewalks adjacent to all private streets, including the driveway extending from 4th Street NE to Regent Place NE, with adequate landscape strips and/or pedestrian buffers, subject to DDOT's approval;
    c. Provide public pedestrian and vehicular access easements as specified in Condition 7;
    d. Improve pedestrian porosity between the site's access points by implementing a sidewalk connection from the 4th Street NE sidewalk to the pedestrian switchback ramp within the "Sylvan Grove" concept;
    e. Provide a pedestrian connection along the western side of townhome unit numbers 50 and 60 (per the numbering shown on the site plan of the Applicant's pre-hearing submission) that also ties into the switchback connection to 4th Street NE;

[7] Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6 (Ex. 5.) In granting the requested self-certified relief subject to the plans submitted with the Application, the Board made no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application that would require additional or different zoning relief from that is granted by this Order.

f. Provide and furnish additional street trees on 4th Street NE adjacent to the site to fill all existing gaps in the "furniture zone", subject to public space permitting; and

g. Implement the following Transportation Demand Management (TDM) Plan as proposed in the Gorove/Slade and Associate's February 2, 2018 CTR, included in the record as Exhibit 62A:

   i. The Applicant shall identify a TDM Leader (for planning, construction, and operations). The TDM Leader will work with residents to distribute and market various transportation alternatives and options;

   ii. The Applicant shall provide updated contact information for the TDM Leader and will report TDM efforts and amenities to goDCgo staff once per year; and

   iii. The Applicant shall establish a TDM marketing program that provides detailed transportation information and promotes walking, cycling, and transit. This information will be compiled in a brochure for distribution to residents. The marketing program will also use and provide website links to CommuteConnections.com and goDCgo.com, which provides transportation information and options for getting around the District.

4. The Applicant shall prohibit all traffic associated with the Project, including construction traffic and residential traffic, from using any roads within the Chancellor's Row development, including Regent Place east of the Project.

5. The Applicant shall install a manually-operated gate, with stone pillars at each end, across the point where the current parking lot on the site connects with Regent Place, at the curve of the road just northeast of the Lee Montessori (or such other school as located at such location on the adjacent property) drop-off loop, with the goal of preventing private vehicles from routinely using Regent Place as a through connection from 4th Street N.E. to 7th Street N.E.

6. The new Paulist Building shall be used as a clerical residence, housing no more than 15 residents at a time, including sleeping quarters and other clerical spaces such as a chapel and refectory, for uses associated with a religious order's mission.

7. Prior to the approval of the final DCRA Building Permit Zoning Inspection for the fiftieth townhouse in the Project, the Applicant shall record an easement substantially in the form included in the record as Exhibit 170C as updated by Pages C-20, C-21, and C-22 in Exhibit 192B, with updates mutually agreed upon by the Applicant and relevant District agencies, to provide public pedestrian and vehicular access and open space at the Property.

8. The Applicant shall provide 9 inclusionary zoning dwelling units, including three reserved for households earning 50% or less of the Washington, DC Median Family Income ("MFI"), three reserved for households earning 60% MFI or less, and three reserved for households earning 80% MFI or less. These affordable units will be distributed substantially in

accordance with Exhibit 192C in the record, provided that the IZ home shown at Lot 4 shall be moved to Lot 57.

9. The Applicant shall not construct any improvements that would encroach upon the easement area for the benefit of USCCB identified in Exhibits 134, 186 or 187 to the extent that such improvements would violate the terms of that easement.
10. The Applicant shall reconstruct the existing fence in the same location along the boundary of the existing USCCB easement and shared property line, with the same height, materials, and other features as the existing fence, and subject to the same rights of USCCB in relation to the existing fence.

11. The Applicant shall install and maintain in the location identified in Exhibit 190 a fence of the same height as the fence that currently exists, and Applicant shall reconstruct, along the boundary of the existing USCCB easement and shared property line, per the request USCCB has made.

12. As part of the Project, the Applicant shall construct a new storm water system that meets the storm water management requirements for the Property, similar to or substantially in accordance with the facilities shown on Page C-10 in Exhibit 192.

VOTE: 5-0-0 (Frederick L. Hill, Carlton Hart, Lesylleé M. White, Lorna L. John, and Robert E. Miller voting to APPROVE.)

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: October 24, 2019

PURSUANT TO 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.

PURSUANT TO SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19618-A of Hillsdale College, pursuant to 11 DCMR Subtitle Y § 705.1, for a two-year time extension of BZA Order No. 19618 approving a special exception under Subtitle U § 601.1(c), to permit a one-family dwelling unit in an existing structure on an alley lot in the RF-3 Zone at premises 19 4th Street Rear N.E. (Square 816, Lot 18).

HEARING DATES (19618): December 6 and December 13, 2017
DECISION DATE (19618): December 13, 2017
ORDER ISSUANCE DATE (19618): December 14, 2017
TIME EXTENSION DECISION DATE: October 16, 2019

SUMMARY ORDER ON REQUEST FOR TWO-YEAR TIME EXTENSION

Original Application. In Application No. 19618, the Board of Zoning Adjustment ("Board" or "BZA") approved a request by Gillette Wing, former owner of the property, for a special exception under Subtitle U § 601.1(c), to permit a one-family dwelling unit in an existing structure on an alley lot in the RF-3 Zone at premises 19 4th Street Rear N.E. (Square 816, Lot 18). The Board issued Order No. 19618 on December 14, 2017. (Exhibit 2.) Pursuant to Subtitle Y § 604.11, the Order became effective ten days after issuance. Pursuant to Subtitle Y § 702.1, the Order was valid for two years from the time it became effective.

Request for Two-Year Time Extension. On September 9, 2019, the current owner of the property, Hillsdale College (the "Applicant"), submitted a request that the Board grant a two-year extension of Order No. 19618. (Exhibits 1-5.)

Notice of the Request. Pursuant to Subtitle Y §§ 705.1(a), the Applicant provided proper and timely notice of the request for time extension. (Exhibit 4.)

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6C.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 10, 2019, at which a quorum was present, the ANC voted 6-0-0 to support the request. (Exhibit 8.)

OP Report. Office of Planning submitted a report recommending approval of the time extension. (Exhibit 6.)

Request to Extend the Validity of the Order

This request for extension is pursuant to Subtitle Y § 705 of the Zoning Regulations, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

Pursuant to Subtitle Y § 705.1(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. Pursuant to Subtitle Y § 705.1(b), the Applicant shall demonstrate that there is no substantial change in any of the material facts upon which the Board based its original approval of the application. Finally, under Subtitle Y § 705.1(c), good cause for the extension must be demonstrated with substantial evidence of one or more of the following criteria: (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control; (2) an inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or (3) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

Based upon the record before the Board and having given great weight to the appropriate recommendations and reports filed in this case, the Board finds that the Applicant has met the criteria of Subtitle Y § 705.1 to extend the validity of the underlying order.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that request for two-year time extension to the validity of the Board's approval in Order No. 19618 is hereby **GRANTED**, and the Order shall be valid until **December 24, 2021**.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Carlton E. Hart, and Robert E. Miller to APPROVE; 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: October 21, 2019

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
BOARD OF ZONING ADJUSTMENT

Application No. 20089 of Owen Place Development, LLC, 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 from the rear yard requirements of Subtitle E § 306.1 to construct a two-story rear addition and to convert an existing attached principal dwelling unit into a flat in the RF-1 Zone at premises 1263 Owen Place N.E. (Square 4060, Lot 198).

HEARING DATE: October 9, 2019
DECISION DATE: October 9, 2019

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 12 (Revised); Exhibit 3 (Original).)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 5D.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on July 2, 2019, at which a quorum was present, the ANC voted 5-0-0 to support the application. (Exhibit 41.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 35.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 36.)

Persons in Support. Two letters were submitted from neighbors in support of the application. (Exhibits 9, 10.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, and from the rear yard

requirements of Subtitle E § 306.1 to construct a two-story rear addition and to convert an existing attached principal dwelling unit into a flat in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS[1] AT EXHIBIT 14 – UPDATED ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; 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: October 18, 2019

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.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY

[1] Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20106 of Jorge Ventura, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, and pursuant to Subtitle X, Chapter 10, for an area variance from the lot occupancy requirements of Subtitle E § 304.1, to construct a two-story, principal dwelling unit addition on an existing retail use building in the RF-1 Zone at premises 328 Kentucky Avenue, S.E. (Square 1039S, Lot 17).

HEARING DATE: October 16, 2019
DECISION DATE: October 16, 2019

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 12 (Revised); Exhibit 9 (Original).)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6B.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 15, 2019, at which a quorum was present, the ANC voted 7-0-0 to support the application. (Exhibit 46.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 34.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 35.)

Persons in Support. A petition of support of the application was submitted by neighbors. (Ex. 40.)

Persons in Opposition. A letter in opposition from the Capitol Hill Restoration Society was submitted into the record. (Exhibit 45.)

Variance Relief

The Applicant seeks relief under Subtitle X § 1002.1 for an area variance from the lot occupancy requirements of Subtitle E § 304.1, to construct a two-story, principal dwelling unit addition on an existing retail use building in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty, in the case of an area variance, or an undue hardship, in the case of a use variance, in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5 to construct a two-story, principal dwelling unit addition on an existing retail use building in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS[1] AT EXHIBIT 41 – UPDATED ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **4-0-1** (Frederick L. Hill, Lorna L. John, Carlton E. Hart, and Robert E. Miller to APPROVE; one Board seat vacant).

[1] Self-certification. In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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: October 18, 2019

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.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20120 of Robert Sale and Katherine Leland, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the side yard requirements of Subtitle D § 206.7, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a second-story rear addition above the one-story rear addition (for which relief from the side yard and nonconforming structure requirements was granted by BZA Order No. 15749) on an existing, detached principal dwelling unit in the R-2 Zone at premises 3917 Military Road N.W. (Square 1750, Lot 57).

HEARING DATE: Applicant waived the right to a public hearing
DECISION DATE: October 16, 2019 (Expedited Review Calendar)

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 35 (Final Revised); Exhibits 12 and 14 (Revised); Exhibit 6 (Original).)

Expedited Review. Pursuant to 11 DCMR Subtitle Y § 401, this application was tentatively placed on the Board of Zoning Adjustment (the "Board" or "BZA") expedited review calendar for decision as a result of the applicant's waiver of its right to a hearing. No objections to expedited review consideration were made by any person or entity entitled to do under Subtitle Y §§ 401.7 and 401.8.

Notice of the Application and Public Meeting. The Board referred the application to the appropriate agencies and provided proper and timely notice of the public meeting in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 3G.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 23, 2019, at which a quorum was present, the ANC voted 5-0-0 to support the application. (Exhibit 38.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 34.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 33.)

Persons in Support. The Board received two letters in support from adjacent neighbors. (Exhibits 17 and 18.)

Prior Approvals. In Application No. 15749, the Board granted variance relief from the nonconforming structure and side yard requirements to allow a one-story rear addition to be constructed on the Property. The present application would add a second story to the previously-approved addition.

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle D § 5201 from the side yard requirements of Subtitle D § 206.7, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a second-story rear addition to an existing, detached principal dwelling unit in the R-2 Zone

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS[1] AT EXHIBIT 3.**

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Robert E. Miller to APPROVE; 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.

[1] Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

FINAL DATE OF ORDER: October 17, 2019

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.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20122 of Emilio Vasquez and Blakeney Vasquez, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the minimum rear yard requirements of Subtitle D § 306.2, to construct a rear deck addition to an existing, detached principal dwelling unit in the R-3 Zone at premises 1021 Cook Drive, S.E. (Square 5912, Lot 55).

HEARING DATE: Applicant waived the right to a public hearing
DECISION DATE: October 16, 2019 (Expedited Review Calendar)

SUMMARY ORDER

Relief Requested. The application was accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (Exhibit 16 (Revised); Exhibit 3 (Original).)

Expedited Review. Pursuant to 11 DCMR Subtitle Y § 401, this application was tentatively placed on the Board of Zoning Adjustment (the "Board" or "BZA") expedited review calendar for decision as a result of the applicant's waiver of its right to a hearing. No objections to expedited review consideration were made by any person or entity entitled to do under Subtitle Y §§ 401.7 and 401.8.

Notice of the Application and Public Meeting. The Board referred the application to the appropriate agencies and provided proper and timely notice of the public meeting in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 8E.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 9, 2019, at which a quorum was present, the ANC voted 4-0-1 to support the application. (Exhibit 35.)

OP Report. The Office of Planning submitted a report, dated October 4, 2019, recommending approval of the application. (Exhibit 36.)

DDOT Report. The District Department of Transportation submitted a report, dated September 27, 2019, indicating that it had no objection to the application. (Exhibit 37.)

Persons in Support. The Board received a letter in support from adjacent neighbors Patrice and Rebekah Day of 1019 Cook Drive, S.E. (Exhibit 13.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle D § 5201 from the minimum rear yard requirements of Subtitle D § 306.2, to construct a rear deck addition to an existing, detached principal dwelling unit in the R-3 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7).**

VOTE: **4-0-1** (Frederick L. Hill, Lorna L. John, Carlton E. Hart, and Robert E. Miller to APPPROVE; 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: October 17, 2019

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.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20123 of Darius Arod, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the rear yard requirements of Subtitle D § 306.2, to construct a rear deck addition and a rear porch addition in the R-3 Zone at premises 1440 T Street, S.E. (Square 5605, Lot 835).[1]

HEARING DATES: October 9 and 16, 2019
DECISION DATE: October 16, 2019

SUMMARY ORDER

Relief Requested. The application was accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (Exhibit 39 (Final Revised); Exhibit 34 (Revised Notes and Computations); Exhibits 5 (Original).)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 8A.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 1, 2019, at which a quorum was present, the ANC voted 5-0-0 to support the application. (Exhibit 36.)

OP Report. The Office of Planning submitted three reports recommending approval of the application, as amended. (Exhibit 30 (Original); Exhibit 35 (Supplemental); Exhibit 38 (Second Supplemental).)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 31.)

[1] The application was amended to withdraw the request for a special exception from the side yard requirements of Subtitle D § 206.2. (Exhibit 39.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle D § 5201 from the rear yard requirements of Subtitle D § 306.2, to construct a rear deck addition and a rear porch addition in the R-3 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 40 – REVISED ARCHITECTURAL PLANS.**

VOTE: **4-0-1** (Carlton E. Hart, Lorna L. John, Frederick L. Hill, and Peter G. May (by absentee vote) to APPROVE; 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: October 21, 2019

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.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING

THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20125 of Christopher and Marcelline Green, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the lot occupancy requirements of Subtitle D § 304.1, and the maximum building area requirements of Subtitle D § 5006.1, to construct a rear garage and carport addition in the R-1-B Zone at premises 1216 Decatur Street, N.W. (Square 2921, Lot 26).

HEARING DATE: October 16, 2019
DECISION DATE: October 16, 2019

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 4C.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 11, 2019, at which a quorum was present, the ANC voted 7-0-0 to support the application. (Exhibit 26.)

OP Report. The Office of Planning submitted a report, dated October 4, 2019, recommending approval of the application. (Exhibit 29.)

DDOT Report. The District Department of Transportation submitted a report, dated September 25, 2019, indicating that it had no objection to the application. (Exhibit 27.)

Persons in Support. The Board received eight letters from neighbors in support of the application. (Exhibit 10.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle D § 5201 from the lot occupancy requirements of Subtitle D § 304.1, and the maximum building area

requirements of Subtitle D § 5006.1, to construct a rear garage and carport addition in the R-1-B Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS[1] AT EXHIBIT 6.**

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Robert E. Miller to APPROVE: 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: October 23, 2019

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.
PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

[1] Self-certification: In granting the self-certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20126 of Chad Clark, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D §§ 5201 and 1206.4 from the rear addition requirements of Subtitle D § 1206.3, to construct a three-story rear addition to an existing, attached principal dwelling unit in the R-20 Zone at premises 1614 34th Street, N.W. (Square 1277, Lot 204).

HEARING DATE: October 16, 2019
DECISION DATE: October 16, 2019

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 2E.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 3, 2019, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 33.)

OP Report. The Office of Planning submitted a report, dated October 4, 2019, recommending approval of the application. (Exhibit 42.)

DDOT Report. The District Department of Transportation submitted a report, dated September 27, 2019, indicating that it had no objection to the application. (Exhibit 43.)

Persons in Support. The Board received letters of support for the application from two immediately adjacent neighbors: Zoran Mladenovic of 1612 34th Street, N.W., and Douglas and Jane Rodgers of 1616 34th Street, N.W. (Exhibits 10 and 11.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle D §§ 5201 and 1206.4 from the rear addition requirements of Subtitle D § 1206.3, to construct a three-story rear addition to an existing, attached principal dwelling unit in the R-20 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the

burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS[1] AT EXHIBIT 5.**

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Robert E. Miller to APPROVE; 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: October 23, 2019

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.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION

[1]Self-certification: In granting the self-certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20129 of 555 E Street SW, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the penthouse requirements of Subtitle C § 1500.3(c), to establish a penthouse bar and restaurant use for the penthouse of the proposed hotel in the D-5 Zone at premises 550 School Street, S.W. (Square 494, Lot 36).

HEARING DATE: October 23, 2019
DECISION DATE: October 23, 2019

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6D.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 9, 2019, at which a quorum was present, the ANC voted 5-0-1 to support the application. (Exhibit 30.)

OP Report. The Office of Planning submitted a report, dated October 11, 2019, recommending approval of the application. (Exhibit 35.)

DDOT Report. The District Department of Transportation submitted a report, dated October 11, 2019, indicating that it had no objection to the application. (Exhibit 34.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under the penthouse requirements of Subtitle C § 1500.3(c), to establish a penthouse bar and restaurant use for the penthouse of the proposed hotel in the D-5 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning

Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS[1] AT EXHIBIT 32A.**

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Michael G. Turnbull to APPROVE; 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: October 24, 2019

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.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS

[1] Self-certification: In granting the self-certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20131 of Qinglong Chen, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5203.3, from the roof top addition requirements of Subtitle E § 206.1, to remove a roof top architectural element on an existing detached principal dwelling unit in the RF-1 Zone at premises 711 Lawrence Street N.E. (Square 3653, Lot 24).

HEARING DATE: October 23, 2019
DECISION DATE: October 23, 2019

SUMMARY ORDER

Relief Requested. The application was accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 5E.

ANC Report. The ANC Commissioner for SMD 5E01 indicated that the full ANC would not be providing a formal recommendation or report to the record. (Ex. 29.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 30.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 31.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle E § 5203.3, from the roof top addition requirements of Subtitle E § 206.1, to remove a roof top architectural element on an existing detached principal dwelling unit in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general

purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS[1] AT EXHIBIT 3.**

VOTE: **4-0-1** (Frederick L. Hill, Lorna L. John, Carlton E. Hart, and Michael G. Turnbull to APPROVE; 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: October 24, 2019

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.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION,

[1] Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

BZA APPLICATION NO. 20131
PAGE NO. 3

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-13E
Z.C. Case No. 16-13E
JS Congress Holdings, LLC
(Modification of Consequence of Consolidated PUD
@ Square 748, Lots 78 and 819 [220 L Street, N.E. and 1109-1115 Congress Street, N.E.])
July 29, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held public meetings on July 8, 2019 and July 29, 2019, to consider an application (the "Application") by JS Congress Holdings, LLC (the "Applicant") for a Modification of Consequence to change Condition B.2 of Z.C. Order No. 16-13 that approved a consolidated planned unit development ("PUD") for the property at 220 L Street, N.E. and 1109-1115 Congress Street, N.E., and more particularly identified as Lots 78 and 819 in Square 748 (the "Property"). The Commission considered the Application pursuant to Subtitle Z, Chapter 7, of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the "Zoning Regulations" to which all references refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Background

1. By Z.C. Order No. 16-13, the Commission approved a consolidated PUD for the Property (the "Approved PUD").

2. Condition No. B.2 of Z.C. Order No. 16-13 required the Applicant, *inter alia*, to pay D.C. Habitat for Humanity ("Habitat") $625,000 (the "Habitat payment") by October 31, 2017 to construct off-site affordable housing as a part of the affordable housing provided pursuant to the Approved PUD.

3. In Z.C. Order No. 16-13A, the Commission approved a revision to Condition No. A.4 of Z.C. Order No. 16-13 to clarify the flexibility granted the Applicant to exceed the maximum IZ off-site concentration to conform with the plans for the Approved PUD.

4. In Z.C. Order No. 16-13B, the Commission approved a revision to Condition No. B.2 of Z.C. Order No.16-13 Order to extend the deadline for the Habitat payment to "no later than six months after a favorable resolution of the petition for review by the D.C. Court of Appeals (No. 17-AA-1048)."

5. In Z.C. Order No. 16-13C, the Commission approved a subsequent revision to Condition No. B.2 of Z.C. Order No. 16-13, as modified by Z.C. Order 16-13B, to extend the deadline for the Habitat payment to December 18, 2018.

6. On December 20, 2018, the Applicant made an initial payment toward fulfillment of the Habitat payment in the form of an $85,000 equity contribution to Habitat to assist in the purchase of the property on which the off-site affordable housing would be constructed. (Exhibit ["Ex."] 2A.)

7. In Z.C. Order No. 16-13D, the Commission approved another revision to Condition No. B.2 of Z.C. Order No. 16-13, as modified by Z.C. Order No. 16-13C, to extend the deadline for the Habitat payment to June 30, 2019.

Parties

8. The only party to Z.C. Case No. 16-13 is Advisory Neighborhood Commission ("ANC") 6C, which is the "affected ANC" as defined by Subtitle Z § 101.8, as the Property is located within ANC 6C's boundaries.[1]

The Application

9. The Applicant filed the Application with the Commission on June 13, 2019, requesting a further revision of Condition No. B.2 of Z.C. Order No. 16-13, as revised by Z.C. Order No. 16-13C, to require the Habitat payment be made by December 31, 2019.

10. The Application did not propose any other changes to Z.C. Order No. 16-13 or to the Approved PUD.

11. The Applicant stated that recent changes in the lending policies of the Applicant's lender, which were outside of the Applicant's control, delayed the closing of its construction financing, thus risking the Applicant's ability to make the Habitat payment by the June 30, 2019 deadline. (Ex. 2.)

12. The Applicant stated that it had already filed applications for the necessary raze, sheeting and shoring, foundation-to-grade, and full building permits to construct the Approved PUD, in satisfaction of the December 27, 2019 deadline to file permit applications. (Ex. 2.)

13. The Applicant submitted a Certificate of Service attesting that it had served the Application on ANC 6C, its chair, the chair of the ANC's Zoning Committee, and the Single Member District Commissioner for the Property on July 23, 2019. (Ex. 5.)

14. The Office of Planning ("OP") submitted a report dated July 1, 2019 opining that the Application qualifies as a Modification of Consequence and recommending that the Commission approve the Application. (Ex. 4.)

15. ANC 6C did not submit any response to the record. The Applicant provided a copy of a July 8, 2019 email from the Vice Chair of ANC 6C, stating that the ANC would take no action on the Application. (Ex. 5.)

CONCLUSIONS OF LAW

[1] Although the Commission granted party status to a party in opposition, that party withdrew its request. (Ex. 53 in Z.C. Case No. 16-13.)

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make "modifications of consequence" to final orders and plans without a public hearing.

2. Subtitle Z § 703.3 defines a Modification of Consequence as "a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance."

3. Subtitle Z § 703.4 includes "a proposed change to a condition in the final order" as an example of a Modification of Consequence.

4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 6D.

5. The Commission concludes that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify a final condition, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).

6. The Commission therefore scheduled its consideration and decision on the Application for its July 29, 2019 public meeting in order to provide the ANC additional time to respond to the Application.

7. The Commission concludes that the proposed modification to Condition No. B.2 of Z.C. Order No. 16-13 requested in the Application is consistent with, and does not detract from or diminish, the Commission's decision in Z.C. Order No.16-13 because there have been no changes in material facts on which the Commission relied in approving said order and because the Applicant will still make the Habitat payment prior to the issuance of a building permit.

"Great Weight" to the Recommendations of OP

8. Pursuant to § 13(d) of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) and Subtitle Z § 405.8, the Commission must give "great weight" to the recommendations of OP.

9. The Commission notes OP's lack of objection to the Application being considered as a Modification of Consequence and finds persuasive OP's recommendation that the Commission approve the Application and therefore concurs in that judgment.

"Great Weight" to the Written Report of the ANC

10. Pursuant to § 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)) and Subtitle Z § 406.2, the Commission must give "great weight" to the issues and concerns raised in the written report of the affected ANC. To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected

ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).)

11. As the ANC did not file a written report to the record, there are no issues or concerns to which the Commission can give "great weight."

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Applicant's request for a Modification of Consequence to Z.C. Order No. 16-13, as modified by Z.C. Order Nos. 16-13A and 16-13D, to modify Condition No. B.2 as follows (deletions in **bold and ~~strikethrough~~**; additions in **bold and underlined**):

> B.2. Prior to the issuance of a building permit, the Applicant shall provide proof to the Zoning Administrator that it has paid $625,000 to D.C. Habitat for Humanity no later than **~~June 30~~** **December 31**, 2019, that D.C. Habitat for Humanity has the off-site housing location under its control, that each of the off-site units will consist of a minimum of 900 square feet and two bedrooms, and that the units will be constructed as single-family residences or flats.

All other conditions and provisions of Z.C. Order No. 16-13, as modified by Z.C. Order No. 16-13A, remain effective and unaltered.

VOTE (July 29, 2019): 5-0-0 (Michael G. Turnbull, Robert E. Miller, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on November 1, 2019.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-51

January 3, 2019

VIA ELECTRONIC MAIL

Ms. Loretta Townsend

RE: FOIA Appeals 2019-51

Dear Ms. Townsend:

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"), challenging the response the Department of Corrections ("DOC") provided to your client's request.

Background

On November 14, 2018, your client submitted a FOIA request to DOC for records relating to any training programs she may have completed while an employee of DOC; attached to this request were paystubs from 2008, to verify her employment.

On November 15, 2018, DOC responded to your client's request by stating that a search by the DOC training and Human Resource unit did not yield any responsive records. DOC further noted that due to the age of the time period of the request, any records that would have been potentially responsive would have been disposed of pursuant to DOC's retention policy, and would no longer be maintained.

On December 18, 2018, this Office docketed your appeal, on behalf of your client. Your appeal asserts that "[i]t is difficult to imagine that the Department does not keep records," responsive to your client's request, and requests that DOC review its records.

This Office notified DOC of your appeal. On January 2, 2019, DOC responded.[1] DOC's response reiterated that it does not have records with the information you seek. DOC provided a declaration that explained the search conducted by DOC's "Training Manager." Additionally, DOC indicated that its human resources office conducted a search. DOC indicates these searches located no responsive records. DOC reiterated that because your client's last date of employment was over ten years ago, relevant retention schedules[2] would have called for the disposal of potentially responsive records years ago.

[1] A copy of DOC's response is attached.
[2] A "retention schedule" is the period of time in which an agency maintains old records before disposing of them.

On January 3, 2019, your client called this Office and conveyed that she had heard of another, unnamed employee, who was employed around the same time period, having recently been able to receive a copy of his or her old training certificate.

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).

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).

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). The 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).

According to DOC, it determined that t if the records you requested exist, they would be maintained by either DOC's human resources division or the Center for Professional Development and Learning ("CPDL"). DOC contacted the relevant employees associated with these divisions, who in turn conducted a search. DOC's response includes a declaration from a CPDL manager, who stated that a search of the relevant databases, namely, the Employee Training Information File and the InTime Database, did not find any responsive records. The CPDL manger's declaration indicates that the only related information found in the databases were the start and end date of your client's employment with DOC. A screenshot of the database verifying this information was attached by the manager in DOC's response. The two offices did not locate responsive documents.

Your appeal asserts that it "is difficult to imagine" that no records exist – and your client's phone call indicates that she was aware of another employee who was recently able to receive training records, from some unspecified time. In the absence of any evidence to the contrary, we accept DOC's representations and find (1) that DOC made a reasonable determination as to the locations of the records requested by your client; (2) that DOC conducted an adequate search of these locations for responsive records, and (3) that no responsive records were found.

Your client's request was for records from ten years ago. Government agencies are not obligated to maintain their records in perpetuity. Further, FOIA requires only that agencies produce records in their possession at the time of the request. Here, DOC has indicated that its retention schedule would have called for the disposal of relevant records long before the time of the request. As such, we accept DOC's representation that it does not possess records responsive to your request.

Conclusion

Based on the foregoing, we affirm DOC'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: Oluwasegun Obebe, FOIA Officer, DOC (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-52

January 8, 2019

VIA ELECTRONIC MAIL

Ms. Deborah Lyles

RE: FOIA Appeals 2019-52

Dear Ms. Lyles:

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"), challenging the response the Metropolitan Police Department ("MPD") provided to your request.

Background

On October 16, 2018, you submitted a six-part FOIA request for records related to a traffic ticket issued on April 21, 2018, as well as records of subsequent enforcement and discussion regarding the ticket.

On December 4, 2018, MPD granted your request in part, providing you with responsive records. MPD noted that certain personal information was redacted from its disclosure to protect personal privacy pursuant to D.C. Official Code § 2-534(a)(2) (Exemption 2). MPD asserted certain categories of records that you requested were not maintained by MPD, but by the Department of Motor Vehicles. MPD provided you with 13 pages of responsive documents – of which two pages contain redactions of the names and phone numbers of MPD officers.

On December 21, 2018, this Office received your appeal. Your appeal primarily argues that you are entitled to all parts of records that relate to you.

This Office notified MPD of your appeal. On December 30, 2018, MPD responded.[1] MPD's response reiterates the position that its redactions were appropriate pursuant to Exemption 2.

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.

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).

The primary issue you raise on appeal is your belief that the traffic ticket you received entitles you to all records that relate to you, and that "government employees and officials emails sent for business purposes and not personal reasons . . . void the MPD's assumption that the invasion of privacy redaction is valid."

<u>Exemption 2</u>

Under Exemption 2, 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*.

MPD made redactions to two pages of documents pursuant to Exemption 2 – redacting the names and telephone numbers of law enforcement officers in emails.

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 personally identifiable information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011).

Courts have frequently held that there is a heightened privacy interest in the names and phone numbers of law enforcement officers. *O'Keefe v. DOD*, 463 F. Supp. 2d 317, 324 (E.D.N.Y. 2006) ("Government employees, and specifically law enforcement personnel, have a significant privacy interest in their identities, as the release of their identities may subject them to embarrassment and harassment.").[2] Due to the risk of harassment described in the above-cited

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[2] *See also Long v. OPM*, 692 F.3d 185, 194 (2d Cir. 2012) (holding that OPM properly withheld both names and duty-station information for over 800,000 federal employees in five sensitive agencies and twenty-four sensitive occupations, including, *inter alia*, a correctional officer, U.S. Marshal, nuclear materials courier, internal revenue agent, game law enforcement, immigration inspection, customs and border interdiction, and border protection); *Moore v. Obama*, No. 09-5072, 2009 WL 2762827, at *1 (D.C. Cir. Aug. 24, 2009) (unpublished disposition) (per curiam) ("Appellant fails to demonstrate that the Federal Bureau of Investigation improperly withheld the names and a phone number of its employees pursuant to FOIA Exemptions 6 and 7(C)."); *Lahr v. NTSB*, 569 F.3d 964, 977 (9th Cir. 2009) (reversing district court and holding that FBI agents have cognizable privacy interest in withholding their names because release of FBI agents' identity would most likely subject agents "to unwanted contact by the media and others,

cases, we find that there is at least a *de minimus* privacy interest here, in the redacted names, email addresses and telephone numbers of law enforcement officers.

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of DC FOIA, a record is deemed to be of "public interest" if it would shed light on an agency's conduct. *Beck v. Department of Justice, et al*., 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

> 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.

Id. at 1492-93.

It is unclear how disclosing the names, email addresses, and telephone numbers of the law enforcement officers redacted in the two pages of emails would assist in the public understanding of MPD's overall performance of its statutory duties. Moreover, the risk of these officers being harassed by telephone weighs against disclosure, as such harassment could interfere with MPD's operations. While you may have a personal interest in the handling of a traffic ticket, the identities and contact information of low level employees does not reveal the conduct of the agency. This Office finds that the redactions MPD made to the names, emails addresses, and telephone numbers of law enforcement officers were appropriate.

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)

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including [plaintiff], who are skeptical of the government's conclusion" in investigation of crash of TWA Flight 800), *cert. denied*, 130 S. Ct. 3493 (2010); *Banks v. DOJ*, 813 F. Supp. 2d 132, 142 (D.D.C. 2011) (determining that agency properly redacted law enforcement personnel's names and telephone numbers "from a list of newspapers").

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-53

January 10, 2019

VIA ELECTRONIC MAIL

Ms. Amy Phillips

RE: FOIA Appeals 2019-53

Dear Ms. Phillips:

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 the grounds that the Metropolitan Police Department ("MPD") failed to respond to your November 7, 2018 request for records relating to Adverse Action Hearings.

On December 26, 2018, this Office received your appeal and asked MPD to provide us with a response. MPD responded on January 9, 2019,[1] stating that because of the volume of records responsive to your request, it is still being processed. MPD further indicated one of the categories of documents requested will be provided to you within the next few days, and that the remaining records will be produced on a rolling basis.

Based on the record before us, we conclude that MPD's failure to timely respond to your request constitutes a constructive denial under DC FOIA. Nevertheless, we accept MPD's representation that it is attempting to process your request. We therefore remand this matter to MPD and direct it to disclose to you any non-exempt, responsive records that is has already reviewed, within 5 business days of the date of this decision, and to continue producing records to you on a rolling basis. You may challenge MPD's subsequent response by separate appeal to this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia in the Superior Court of the District of Columbia in accordance with 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: 2019-54

January 16, 2019

VIA ELECTRONIC MAIL

Ms. Kara Kennedy

RE: FOIA Appeals 2019-54

Dear Ms. Kennedy:

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"), challenging the Metropolitan Police Department's ("MPD") lack of production to your September 27, 2018 request for records relating to your firm's client.

This Office contacted MPD on January 2, 2018, and notified the agency of your appeal. MPD responded on January 16, 2018, advising us that "The department provided responsive documents to Ms. Kennedy on January 4, 2019." Moreover, MPD's response indicates that it has not yet completed its production, because of a backlog of videos being processed by its vendor. This Office accepts these representations.

As a result, we remand this matter to MPD to complete the production of the videos responsive to your request. You are free to assert any challenge, by separate appeal to this Office, to the subsequent substantive response 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 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: 2019-55

January 15, 2019

VIA ELECTRONIC MAIL

Mr. Ameer Xenos Flippin

RE: FOIA Appeals 2019-55

Dear Mr. Flippin:

This letter responds to the administrative appeal you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you are challenging the response provided by the Department of Human Resources ("DCHR") to your request.

Background

On July 25, 2018, you submitted a request to DCHR for "all employment records of [a named person] in the General Counsel's Office of the DC Board of Elections and DC Office of Campaign Finance."

On August 15, 2018, DCHR denied your request. In its denial DCHR stated:

> DCHR has no records responsive to your request. The Office of Campaign Finance (OCF) is established within the District of Columbia Board of Elections. OCF is an independent agency. OCF has independent personnel authority, and therefore maintains the personnel records of its own employees.

DCHR provided you with the contact information of the Office of Campaign Finance's FOIA Officer.

On January 1, 2018, you filed this appeal. Your appeal references another request you made to DCHR for the records of another Office of Campaign Finance employee. In an abundance of caution, this decision will cover DCHR's denial of both requests.

DCHR sent a response to your appeal on January 9, 2019. In its response DCHR reiterated that it does not maintain records for the employees of the Office of Campaign Finance.

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 DCHR 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).

Here, you have not provided any argument to explain your belief that DCHR would be in possession of the employment records of an independent agency, the Office of Campaign Finance. DCHR has represented to you that it is not in any way responsible for maintaining such records. We accept DCHR's determination that no repositories in its possession are likely to contain responsive records. 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). We do not believe that you have been denied access to any records possessed by DCHR, by virtue of DCHR not normally possessing the personnel records of independent agencies.

Conclusion

Based on the foregoing, we affirm DCHR'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: Aphrodite Hadjiloucas, 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: 2019-56

January 17, 2019

VIA ELECTRONIC MAIL

Ms. Valerie Jablow

RE: FOIA Appeals 2019-56

Dear Ms. Jablow:

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 the grounds that the Office of the Deputy Mayor for Education ("DME") failed to respond to your request for certain records.

On August 24, 2018, you submitted a request to DME for records related to applications and proposals for public education data.

On January 3, 2019, you submitted an appeal to this Office on the grounds that as of that date you had not received any records from DME in response to your August 2018 request. On January 15, 2018, DME sent us a response, on which you were copied. DME asserted that it was not aware of the request but DME intended to conduct a search. DME offered that within the next 10 days, it would begin to provide you with documents on a rolling basis until the completion of its search and review process. DME's response indicates that it has not yet completed its search or production, and this Office accepts those representations.

As a result, we remand this matter to DME to complete the search that it is conducting, review responsive documents, and provide to you all non-exempt portions.

This constitutes the final decision of this Office. You are free to challenge any subsequent, substantive response(s) you receive from DME by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Keisha Mims, Interim Chief of Staff, DME (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-57

January 29, 2019

VIA ELECTRONIC MAIL

Mr. Jeremy Kutner

RE: FOIA Appeals 2019-57

Dear Mr. Kutner:

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 Metropolitan Police Department ("MPD") to your request for records relating to a named individual.

Background

On December 3, 2018, you submitted a FOIA request to MPD for records relating to (1) any incident report and arrest record for a named individual who is not yourself; and, (2) records related to a specified address. MPD denied your request, neither confirming nor denying the existence of responsive records,[1] on the grounds that disclosure or even acknowledgement of the requested records, would constitute a clearly 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"). Additionally, MPD responded by stating that it did not possess records related to the address for the time period specified in your request.[2]

This Office received your appeal on January 7, 2019. On appeal you challenge MPD's response – arguing that MPD's use of a Glomar response is impermissible because it "upends the transparency promised by open records laws." In support of your position that the Glomar doctrine "has no basis in FOIA," you attached to your appeal an *amici curiae* brief that was filed in support of an unsuccessful litigant in the State of New York. Your appeal does not cite to a case in which a court rejected the use of a Glomar response. Alternatively, you argue that the arrest records of the named individual, who is not yourself, if they exist, should be released because any privacy interest is outweighed by the public interest. You argue that MPD has not met its burden in explaining its invocation of the privacy exemption – stating that MPD has not explained "what privacy interest is at issue here[,]" where there is a request for the release to a third party of law enforcement records concerning a named individual. You posit that there is a public interest in the records you requested, on the basis that MPD releases other types of

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[1] This type of response is referred to as a "Glomar" response.
[2] You do not challenge this portion of MPD's response.

information to the public "almost daily" and that "[t]here is no evidence any of these releases are removed if a suspect is later exonerated or acquitted." In support of release, you argue without citation that the "public interest is even more forceful here, where the individual is a foreign national." Your appeal did not present any authorization from the individual referenced in your request.

MPD sent this Office a response to your appeal on January 15, 2019.[3] MPD reaffirms its earlier position that under Exemptions 2 and 3, any responsive records would be exempt because the release of any potentially responsive records "would constitute a clearly unwarranted invasion of privacy." Additionally, MPD neither confirms nor denies the existence of responsive records, claiming that doing so would itself constitute an invasion of the identified person's privacy.

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.

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).

Exemption 2

Exemption 2 prevents disclosure of "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Under Exemption 2, 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*. "[A]s a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *Reporters Comm. For Freedom of Press*, 489 U.S. at 780. Here, we find that disclosing responsive records pertaining to arrest records of a named individual who is not

[3] A copy of the MPD's response is attached.

yourself, and from whom you have not provided written authorization, would constitute an unwarranted invasion of the individual's personal privacy.

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of DC FOIA, a record is deemed to be of "public interest" if it would shed light on an agency's conduct. *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

> 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.

Id. at 1492-93.

Your appeal argues that there is a public interest insofar as arrest records show what the government is up to because it shows "who it arrests and when. . . ." You argue that the public's right to know who the government is arresting outweighs the right of the individual to have that arrest kept private. Without citation, your appeal states that "[t]his public interest is even more forceful here, where the individual involved is a foreign national."[4] Your appeal does not cite to a case in which an arrest record of a named individual was ordered released to a third-party.

In reviewing the balancing of interests, concerning the release of "rap sheets" of individuals, the Supreme Court stated:

> When the subject of such a rap sheet is a private citizen and when the information is in the Government's control as a compilation, rather than as a record of "what the Government is up to," the **privacy interest protected by Exemption 7(C)[5] is in fact at its apex while the FOIA-based public interest in disclosure is at its nadir**. . . . Such a disparity on the scales of justice holds for a class of cases without regard to individual circumstances; the standard virtues of bright-line rules are thus present, and the difficulties attendant to ad hoc adjudication may be avoided. Accordingly, we hold as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, and that when the request seeks no "official information" about a Government agency, but merely records that the Government happens to be storing, the invasion of privacy is "unwarranted."

Reporters Comm. For Freedom of Press, 489 U.S. at 780 (emphasis added).

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[4] We reject the proposition that the country of origin of an individual alters the Exemption 2 analysis, and will not discuss it further.
[5] Exemption 7 is the federal equivalent to the District's Exemption 3.

We find the instant request to fall under this rubric. As a result, we find that the release to a third party of police records, if they exist, relating to the named individual would be an unwarranted invasion of privacy and would not "contribute *significantly* to public understanding of the operations or activities of the government. *See Berger v. I.R.S.*, 487 F. Supp. 2d 482, 505; *see also Hines v. D.C. Bd. of Parole*, 567 A.2d 909, 912 (D.C. 1989) (noting that "courts are generally reluctant 'to give third parties access to the presentence investigation report prepared for some other individual or individuals'").

As a result of the existence of a privacy interest and the lack of a demonstrated public interest in the records at issue, MPD properly withheld the records, if they exist, pursuant to Exemption 2 of the DC FOIA.

Glomar Response

We say "if they exist" because the MPD has neither confirmed nor denied whether the requested arrest records exist relating to the named individual. This type of response is referred to as a "Glomar" response, and it is warranted when the confirmation or denial of the existence of responsive records would, in and of itself, reveal information exempt from disclosure. *Wilner v. Nat'l Sec. Agency*, 592 F.3d 60, 68 (2nd Cir. 2009). Here, the Glomar response is justified because if a record relating the person you have named exists, identifying the record's existence would likely result in the privacy harm that Exemption 2 was intended to protect. *Lewis v. DOJ*, 733 F. Supp. 2d 97, 112 (D.D.C. 2010) ("If an individual is the target of a FOIA request [for investigative records], the agency to which the FOIA request is submitted may provide a 'Glomar' response, that is, the agency may refuse to confirm or deny the existence of records or information responsive to the FOIA request on the ground that even acknowledging the existence of responsive records constitutes an unwarranted invasion of the targeted individual's personal privacy."); *Smith v. FBI*, 663 F. Supp. 2d 1, 5 (D.D.C. 2009) ("Because . . . confirmation of records concerning '[a]ny adverse action or disciplinary reports on [named] Agent . . .' would necessarily reveal the precise information Exemption 6 shields, the Glomar response was proper.").

Your appeal argues that there is no basis in DC FOIA for a Glomar response. In support of this, you attached an *amici curiae* brief that was filed in support of a challenge to the use of a Glomar response under New York's Freedom of Information Law ("FOIL"). The state of New York, like the federal government, does not have a statute that explicitly authorizes the use of a Glomar response to protect the interests covered by the exemptions. Nonetheless, the Court of Appeals for the State of New York ultimately rejected the challenge and found the use of Glomar to be "compatible" with New York's statute. *Matter of Abdur-Rashid v. N.Y.C. Police Dep't*, 100 N.E.3d 799, 807 (N.Y. 2018) ("there are indeed occasions when, due in large part to the precise manner in which the FOIL request is structured, an interpretation of the statute that compels a law enforcement agency to reveal that responsive records exist with respect to a specific individual or organization would, in effect, force the agency to disclose substantive information that is protected . . .").

Given that acknowledging the existence of certain types of records can amount to a substantive admission of information which would perpetuate the harm the exemptions are designed to prevent, we see no reason to reject the use of a Glomar response categorically, as your appeal asks us to do.

Segregability

The last issue to be considered is whether MPD could disclose remaining portions of the records, if they exist, in a way that would still 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).

Redaction of potential records would not protect the privacy interest contemplated by Exemption 2 here, because you have named the individual whose records you seek. *See Mueller v. U.S. Dep't of the Air Force*, 63 F. Supp. 2d 738, 744 (E.D. Va. 1999) (noting that when requested documents relate to a specific individual, "deleting [her] name from the disclosed documents, when it is known that she was the subject of the investigation, would be pointless").

Conclusion

Based on the forgoing, 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 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: 2019-58

January 24, 2019

VIA ELECTRONIC MAIL

Mr. Nik Philipsen

RE: FOIA Appeals 2019-58

Dear Mr. Philipsen:

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 the grounds that the Executive Office of the Mayor ("EOM") failed to respond to your request for certain records.

On November 2, 2018, you submitted a request to EOM for records related to a "letter sent by the District to UPS, FedEX, USPS, Uber, Lyft, and/or other fleet operators regarding vehicles blocking the bike lane, on or about 10/15/2018." Further, you requested the names of the recipients and communications received in response to the letter.

On January 8, 2019, you submitted an appeal to this Office on the grounds that as of that date you had not received a response from EOM to your request. On January 15, 2018, EOM sent this Office a response to your appeal.

In EOM's response, EOM indicated that the letter was sent by the Directors of the Department of Transportation and the Department of Public Works, and is publicly available. EOM provided a hyperlink to the letter in its response. Moreover, EOM indicated that because the letter was sent by other agencies, EOM does not have a list of the recipients of the letter, and that portion of your request should be submitted directly to the agencies that sent the letter.

We accept EOM's statement that it does not possess records responsive to the second part of your request. 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). As a result, we dismiss that portion of your appeal.

Additionally, EOM's response indicates that it is conducting a search of any communications received in response to the letter, and that once that search is complete, EOM will contact you. EOM's response indicates that it has not yet completed its search or production, and this Office accepts those representations.

As a result, we remand this matter to EOM to complete the search that it is conducting, review responsive documents, and provide to you all non-exempt portions.

This constitutes the final decision of this Office. You are free to challenge any subsequent, substantive response(s) you receive from EOM by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Erika Satterlee, Associate Director, EOM (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-59

January 28, 2019

VIA ELECTRONIC MAIL

Ms. Renee Bowser

RE: FOIA Appeals 2019-59

Dear Ms. Bowser:

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 Housing and Community Development ("DHCD") improperly withheld records you requested under the DC FOIA.

Background

On December 24, 2018, you submitted a six-part request to DHCD for records that related to a request for proposals for an affordable housing project. On December 29, 2018, DHCD denied your request pursuant to D.C. Official Code § 2-534(e), which clarifies that the deliberative process privilege protects records from disclosure under D.C. Official Code § 2-534(a)(4) ("Exemption 4").

On appeal, you challenge DHCD's withholding pursuant to Exemption 4. You argue that DHCD has not adequately demonstrated that the deliberative process privilege applies to the records you seek. This Office received your appeal on January 8, 2019, and contacted DHCD for its response on January 9, 2019. On January 22, 2018, DHCD provided this Office with a response to your appeal and a copy of the withheld records for our *in camera* review.[1] In its response to your appeal, DHCD revised its position of its initial denial of your request. DHCD asserted that documents responsive to the first part of your request were exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(1) ("Exemption 1"), as protected trade secrets, commercial, or financial information. DHCD provided 175 documents, consisting of approximately 1,279 pages, responsive to the first part of your request for *in camera* review. DHCD stated that documents responsive to parts 3 and 4 of your request are already publically available on DHCD's website.[2] Finally, DHCD asserted that it does not possesses responsive records for parts 2, 5, and 6 of your

[1] A copy of DHCD's response is attached, absent the records provided for *in camera* review.
[2] DHCD provided the link https://bit.ly/2W5BrUJ containing documents responsive to parts 3 and 4 of your request.

request;[3] however, DHCD volunteered that records related to housing code violations referenced in parts 5 and 6 of your request may be obtained from the Department of Consumer and Regulatory Affairs.

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.

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. *See Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

In response to your appeal, DHCD changed the basis for its withholding from Exemption 4[4] to Exemption 1. As a result, the crux of this appeal is whether the information responsive to the first part of your request is protected from disclosure in its entirety by Exemption 1.

Exemption 1 protects from disclosure "[t]rade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained[.]" D.C. Official Code § 2-534(a)(1). To withhold information under Exemption 1, the information must be: (1) a trade secret or commercial or financial information; (2) that was obtained from outside the government; and (3) would result in substantial harm to the competitive position of the person from whom the information was obtained. *See id*. The D.C. Circuit has defined a trade secret, for the purposes of the federal Freedom of Information Act, "as a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding,

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[3] This Office asked DHCD to clarify how it determined that it did not maintain responsive records for parts 2, 5, and 6 of your request. On January 25, 2018, DHCD provided supplemental documentation affirming that it does not maintain records of housing code violations. Copies of these responses are attached.

[4] We note that bids obtained from prospective applicants outside the government do not meet the threshold requirement of Exemption 4 of being "inter-agency or intra-agency" records. *See Physicians Committee for Responsible Medicine v. NIH*, 326 F. Supp. 2d 19, 29 (D.D.C. 2004). However, DHCD's internal evaluation, analysis, and scoring of bids in an effort to reach a decision on the contract award would be subject to protection under the deliberative process privilege of Exemption 4. *See SMS Data Prods. Group Inc. v. U.S. Dep't of the Air Force*, No. 88-481, 1989 WL 201031, at *1-2 (D.D.C. Mar. 31, 1989).

or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). The D.C. Circuit has also instructed that the terms "commercial" and "financial" used in the federal FOIA should be accorded their ordinary meanings. *Id* at 1290.

Exemption 1 has been "interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury." *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); s*ee also Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989). In construing the second part of this test, "actual harm does not need to be demonstrated; evidence supporting the existence of potential competitive injury or economic harm is enough for the exemption to apply." *Essex Electro Eng'rs, Inc. v. United States Secy. of the Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010); *see also McDonnell Douglas Corp. v. United States Dep't of the Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004) (The exemption "does not require the party . . . to prove disclosure certainly would cause it substantial competitive harm, but only that disclosure would 'likely' do so.")(citations omitted).

Competitive Harm

We find that portions of the records withheld by DHCD would cause competitive harm if released. For example, types of information that are protected by Exemption 1 include: (1) detailed financial information concerning assets, liabilities and net worth; (2) a company's actual costs, break-even calculations, and profits; (3) data describing a company's workforce that reveals labor cost and profit margins; (4) a company's selling prices and purchase activity; (5) information which would give insight into the operations of a company; and (6) information concerning sub-contractors.[5]

However, not all portions of the withheld records would cause competitive harm if released. In *Washington Post Co.*, the court considered on appeal the withholding of a "business profile" that included:

> depth information regarding their corporate structure and by-laws, the financial structure and management of this enterprise, the ownership of stock in the company, and whether the company is certified as a minority business in any

[5] *RMS*, No. C-92-1545, slip op. at 7 (N.D. Cal. Nov. 24, 1992) (finding impairment for equipment descriptions, employee, customer, and subcontractor names submitted in connection with government contract, because "bidders only submit such information if it will not be released to their competitors"); *see also Treatment of Animals v. U.S. Dep't of Agric.*, No. CIV. 03 C 195-SBC, 2005 U.S. Dist. Lexis 10586, at *7 (D.D.C. May 24, 2005) ("insights into the company's operations, give competitors pricing advantages over the company, or unfairly advantage competitors in future business negotiations."); *Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976). (finding that insights into the operational strengths and weaknesses of a business allow others to engage in "[s]elective pricing, market concentration, expansion plans, . . . take-over bids[,] . . . bargain[ing] for higher prices … unregulated competitors would not be similarly exposed.").

> other jurisdiction. Individuals associated with the enterprise must reveal their other business interests. Each enterprise must provide information regarding any prior government contracting experience, as well as any history of debarment on its part or on the part of its principals, partners or stockholders.

560 A.2d 517, 519-20 (D.C. 1989).

Based upon our *in camera* review of the submitted records, this "business profile" is similar in kind to some of the records withheld by DHCD, and as with DHCD, the agency at issue in *Washington Post Co*. initially withheld the entire document. The Court of Appeals remanded the matter to the District Court to reconsider whether certain portions of the "business profile" could be segregated, noting the soundness of the government's concession that "not all of the materials submitted in or with the . . . business profiles was exempt." *Id.* at 522. The only portion of the "business profile" that the Court of Appeals identified as clearly exempt was a "marketing techniques" portion that is dissimilar to some of the record at issue here, which do not appear to be technical in nature. *Id.* Unfortunately, there is no subsequent case history that shows what the District Court decided on remand.

It does not appear that DHCD considered whether information in the records is reasonably segregable, pursuant to D.C. Official Code § 2-534(b). For example, there are various certifications of compliance made by the applicant that would not result in substantial harm to the applicant, should they be made public. As a result, DHCD should review the withheld application to determine which portions can be disclosed and which portions should be redacted.

Further, it should be noted that DHCD is authorized to charge you a fee for the actual costs of searching for, reviewing, redacting, and making copies of records pursuant to the DC FOIA. *See* D.C. Official Code §§ 2-532(b);(b-3); 1 DCMR § 408. Thus, if DHCD makes a good faith determination that it will incur over $250 in fees reviewing the 1,279 withheld pages, DHCD is permitted to require prepayment pursuant to D.C. Official Code § 2-532(b-3).

Conclusion

Based on the foregoing, we affirm DHCD's decision in part and remand in part. DHCD shall review the documents it withheld and disclose to you nonexempt portions, on a rolling basis, in accordance with the guidance in this decision. You are free to challenge DHCD's subsequent response by separate appeal to this Office.

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.

Sincerely,

Mayor's Office of Legal Counsel
cc: Tonya Condell, Assistant 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: 2019-60

January 30, 2019

VIA ELECTRONIC MAIL

Ms. Valerie Jablow

RE: FOIA Appeals 2019-60

Dear Ms. Jablow:

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 the grounds that the Office of the Deputy Mayor for Education ("DME") failed to respond to your December 12, 2018 request for records related to contracts between DME and ten named individuals.

You submitted your appeal on January 15, 2019, and this Office notified DME and requested that it respond to your appeal. On January 30, 2019, DME provided its response, copying you, and stated that DME had no records responsive to your request because DME had not entered into any contracts with the individuals named in your request.[1]

Since your appeal was based on DME's failure to respond to your request, and the agency has now responded, we consider your appeal to be moot and hereby dismiss it. You are free to challenge DME's substantive response by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Keisha Mims, Interim Chief of Staff, DME (via email)

[1] A copy of DME'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: 2019-61

January 30, 2019

VIA ELECTRONIC MAIL

Ms. Stacy Cowley

RE: FOIA Appeals 2019-61

Dear Ms. Cowley:

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 Metropolitan Police Department ("MPD") to your request for records relating to a named individual.

Background

On January 11, 2019, you submitted a FOIA request to MPD for records relating to the arrest of an individual in March of 2009. On the same day, MPD denied your request, neither confirming nor denying the existence of responsive records,[1] on the grounds that disclosure or even acknowledgement of the requested records would constitute a clearly 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").

This Office received your appeal on January 15, 2019. On appeal you challenge MPD's response – arguing that the existence of the arrest record is already public because the individual filed a lawsuit against the District of Columbia describing the date and circumstances of the arrest. Further, you argue that disclosure is warranted because of the public interest in understanding the allegations addressed in the litigation. The complaint filed in the lawsuit alleges that MPD did not properly calibrate breath test machines to test breath alcohol levels.

MPD sent this Office a response to your appeal on January 25, 2019.[2] MPD reaffirms its earlier position that under Exemptions 2 and 3, any responsive records would be exempt because the release of any potentially responsive records "would constitute a clearly unwarranted invasion of privacy." Additionally, MPD neither confirms nor denies the existence of responsive records, claiming that doing so would itself constitute an invasion of the identified person's privacy.

Discussion

[1] This type of response is referred to as a "Glomar" response.
[2] A copy of the MPD's response is attached.

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.

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).

Glomar Response

In this matter, MPD has neither confirmed nor denied whether the requested arrest records exist relating to the named individual. This type of response is referred to as a "Glomar" response, and it is warranted when the confirmation or denial of the existence of responsive records would, in and of itself, reveal information exempt from disclosure. *Wilner v. Nat'l Sec. Agency*, 592 F.3d 60, 68 (2nd Cir. 2009). A Glomar response in requests like the one in this appeal is normally justified because if a record relating to a person named exists, identifying the record's existence would likely result in the privacy harm that Exemption 2 was intended to protect. *Lewis v. DOJ*, 733 F. Supp. 2d 97, 112 (D.D.C. 2010) ("If an individual is the target of a FOIA request [for investigative records], the agency to which the FOIA request is submitted may provide a 'Glomar' response, that is, the agency may refuse to confirm or deny the existence of records or information responsive to the FOIA request on the ground that even acknowledging the existence of responsive records constitutes an unwarranted invasion of the targeted individual's personal privacy."); *Smith v. FBI*, 663 F. Supp. 2d 1, 5 (D.D.C. 2009) ("Because . . . confirmation of records concerning '[a]ny adverse action or disciplinary reports on [named] Agent . . .' would necessarily reveal the precise information Exemption 6 shields, the Glomar response was proper."). Acknowledging the existence of certain types of records can amount to a substantive admission of information which would perpetuate the harm the exemptions are designed to prevent.

However, in the instant matter – as your appeal highlights- the subject of your request has acknowledged the fact of his arrest in a suit in federal court concerning the events connected to his arrest. Under the Glomar doctrine, a Glomar response is not appropriate when there has been a prior public acknowledgement of the information. *Meserve v. DOJ*, No. 04-1844, 2006 U.S. Dist. LEXIS 56732, at *19-22 (D.D.C. Aug. 14, 2006) (concluding that while agency confirmed existence of records relating to third party's participation at public trial, it also properly provided "Glomar" response for any additional documents concerning third party); *Hidalgo v. FBI*, No. 04-0562, slip op. at 4-5 (D.D.C. Sept. 29, 2005) (finding "Glomar" response to be inappropriate when informant is not stigmatized by public confirmation of his FBI file and plaintiff has provided evidence to support allegations of government misconduct).

As a result of the public filing of the lawsuit, we do not find that acknowledging a specific arrest record exists would convey substantive information that would constitute an unwarranted invasion of privacy. Therefore, in this matter a Glomar response is not warranted.

Exemption 2

Exemption 2 prevents disclosure of "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Under Exemption 2, 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*. The instant matter concerns a request for an arrest record of a named individual who is not yourself. "[A]s a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *Reporters Comm. For Freedom of Press*, 489 U.S. at 780. Here, we find that disclosing responsive records pertaining to arrest records of a named individual who is not yourself, and from whom you have not provided written authorization, would constitute an unwarranted invasion of the individual's personal privacy.

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. Your appeal posits that you are "a reporter seeking these records for news-gathering purposes" and that "[d]isclosure of these records would further the public's understanding of the issues addressed in the litigation." Generally, the identity of the requester and the motivation for the request are not relevant considerations. *Stone v. FBI*, 727 F. Supp. 662, 668 n.4 (D.D.C. 1990). In the context of DC FOIA, a record is deemed to be of "public interest" if it would shed light on an agency's conduct. *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

> 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.

Id. at 1492-93.

We find that the release to a third party of police records relating to a named individual would be an unwarranted invasion of privacy and would not "contribute *significantly* to public

understanding of the operations or activities of the government. *See Berger v. I.R.S.*, 487 F. Supp. 2d 482, 505; *see also Hines v. D.C. Bd. of Parole*, 567 A.2d 909, 912 (D.C. 1989) (noting that "courts are generally reluctant 'to give third parties access to the presentence investigation report prepared for some other individual or individuals'"). It is unclear how this specific arrest record, if it exists, would further the understanding of the public of MPD's performance of its statutory duties. Specifically, it is unclear how a specific arrest record would shed light on MPD's policies and practices related to the calibration of breath test machines as alleged in the lawsuit's complaint.

As a result of the existence of a privacy interest and the lack of a relevant public interest in the records at issue, MPD properly withheld the records, if they exist, pursuant to Exemption 2 of the DC FOIA.

Conclusion

Based on the forgoing, we affirm MPD's decision.[3]

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)

[3] While we accept your argument that a Glomar response is inappropriate in the instant matter, because the person's whose privacy interest is protected by the response has publicly acknowledged the existence of the arrest, we find categorically that releasing the substance of arrest records to a third party requester would constitute an unwarranted invasion of privacy absent a compelling public interest. The records could not be reasonably segregated due to the nature of the request. *See Mueller v. U.S. Dep't of the Air Force*, 63 F. Supp. 2d 738, 744 (E.D. Va. 1999) (noting that when requested documents relate to a specific individual, "deleting [her] name from the disclosed documents, when it is known that she was the subject of the investigation, would be pointless").

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-62

February 6, 2019

VIA ELECTRONIC MAIL

Mr. Michael Perloff

RE: FOIA Appeals 2019-62

Dear Mr. Perloff:

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 the grounds that the Metropolitan Police Department ("MPD") denied your client's request to view body-worn camera recordings concerning himself, pursuant to 24 DCMR § 3902.5.

Your appeal was docketed by this Office on January 22, 2019. This Office notified MPD and requested that it respond to your appeal. On February 6, 2019, MPD indicated to this Office that it would make the record requested available to your client.

Since your appeal was based on MPD's denial of the right to inspect records, and the agency has now represented that it will no longer deny inspection of those records, we consider your appeal to be moot and hereby dismiss it. You are free to challenge MPD's response by 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.

Sincerely,

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: 2019-63

February 5, 2019

VIA ELECTRONIC MAIL

Mr. Alan Higgins

RE: FOIA Appeals 2019-63

Dear Mr. Higgins:

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 the investigation of a traffic accident.

Background

On December 13, 2018, you submitted a FOIA request to MPD asking for all records, including surveillance footage, related to the investigation of a traffic accident that occurred on April 20, 2017, that resulted in the death of a pedestrian. Your request included an authorization from your client, the father of the decedent; the death certificate; and a police report for the incident.

On December 27, 2018, MPD denied your request in full, stating that responsive investigative record was being withheld under D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3(A)(i)"), on the basis that disclosure of the records would interfere with pending enforcement proceedings by "revealing the direction and pace of the investigation… lead to attempts to destroy or alter evidence, reveal information about potential witnesses who could then be subjected to intimidation as part of an effort to frustrate future investigative activities, or could place witnesses in danger."

This Office received your appeal on January 22, 2019, and contacted MPD for its response. On appeal you argue that MPD's denial pursuant to Exemption 3(A)(i) is improper because the investigation of the April 2017 accident should be complete. Additionally, you also assert that disclosure, specifically of surveillance footage, would promote judicial efficiency by allowing a determination of the cause of the collision.

MPD sent this Office a response to your appeal on February 5, 2018,[1] reaffirming its position that MPD's investigative records are exempt in their entirety under Exemption 3(A)(i). MPD asserts that its FOIA staff verified that the Office of the United States Attorney for the District of

[1] A copy of the MPD's response is attached.

Columbia is still investigating the accident that is the subject of your FOIA request. MPD further reiterates that release of responsive documents would interfere with the investigation because revealing evidence could affect the recollections of witnesses; therefore, releasing responsive documents could also deprive a person of a right to a fair trial or an impartial adjudication. MPD affirms that it will process a request for the requested documents upon the conclusion of the investigation.

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).

Exemption 3(A)(i) exempts from disclosure investigatory records that were compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. D.C. Official Code § 2-534(a)(3)(A)(i). "To invoke this exemption, an agency must show that the records were compiled for a law enforcement purpose and that their disclosure '(1) could reasonably be expected to interfere with (2) enforcement proceedings that are (3) pending or reasonably anticipated.'" *Manning v. DOJ*, 234 F. Supp. 3d 26 (D.D.C. 2017) (citing *Mapother v. U.S. Dep't of Justice*, 3 F.3d 1533, 1540 (D.C. Cir. 1993).

The purpose of Exemption 3(A)(i) is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 224, 232 (1978). "So long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, the investigatory record exemption applies." *E.g. Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted).

Conversely, "where an agency fails to demonstrate that the documents sought relate to any ongoing investigation or would jeopardize any future law enforcement proceedings, the investigatory records exemption would not provide protection to the agency's decision." *Id*. An agency must sustain its burden "by identifying a pending or potential law enforcement proceeding or providing sufficient facts from which the likelihood of such a proceeding may reasonably be inferred." *Durrani v. DOJ*, 607 F.Supp.2d 77, 90 (D.D.C. 2009).

Here, we accept MPD's representation that an investigation is ongoing and releasing the investigative records would interfere with ongoing enforcement proceedings, because the information could allow witnesses to tailor their testimony based on the responsive records.

Conclusion

Based on the forgoing, we affirm MPD's 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: 2019-64

February 6, 2019

VIA ELECTRONIC MAIL

Mr. Bretton Robinson

RE: FOIA Appeals 2019-64

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 challenge the Metropolitan Police Department's ("MPD") response to your request for records under the DC FOIA.

Background

On December 23, 2018, you submitted to MPD a request for records submitted in support of an allegation that you had violated a civil protective order. You asserted that the allegation was not prosecuted and the matter was dismissed. Additionally, you believed that copy of the material provided in support of the allegation was submitted to MPD. Your request also made prospective arguments that the responsive records were not exempt from disclosure and that disclosure would benefit the public interest.

On December 24, 2018, MPD denied your request in its entirety pursuant to D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C), both of which protect the release of records that would constitute an unwarranted invasion of personal privacy.

On January 23, 2019, this Office received your appeal and contacted MPD for its response. On appeal you argue that MPD did not provide adequate justification to withhold responsive records pursuant to the privacy exemptions it cited. Additionally, you argue that if the allegation had been prosecuted you would have been able to receive the records under the rules of criminal procedure; as a result, you claim that the records should be available to you under FOIA.

MPD provided this Office with a response to your appeal on February 6, 2019.[1] In its response, MPD revised its initial denial, asserting that upon further review of its Records Branch which maintains "complaint records as well as documents associated with enforcement of protective orders," MPD discovered that it did not maintain any responsive records other than the incident report that you already have.

[1] A copy of MPD's response is attached.

Since your appeal was based on MPD's withholding of records pursuant to the privacy interest exemptions, and MPD has now represented that it is not withholding any records, we consider your appeal to be moot and hereby dismiss it. You are free to challenge MPD's determination that it does not maintain any responsive records by 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.

Sincerely,

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: 2019-65

February 11, 2019

VIA ELECTRONIC MAIL

Mr. Steve Thompson

RE: FOIA Appeals 2019-65

Dear Mr. Thompson:

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 the City Administrator ("OCA") to your request under the DC FOIA.

Background

On December 28, 2018, OCA received your request for "copies of all federal grand-jury subpoenas received by the District's Office of the City Administrator since Sept. 22, 2018 that seek information about
interactions between [two specified individuals]." OCA denied your request by neither confirming nor denying the existence of responsive records.[1] In denying the request, OCA relied on D.C. Official Code § 2-534(a)(6) ("Exemption 6"), which allows for the following matters to be exempt from public disclosure:

> Information specifically exempted from disclosure by statute (other than this section), provided that such statute:
>
> **(A)** Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
>
> **(B)** Establishes particular criteria for withholding or refers to particular types of matters to be withheld[.]

[1] An Agency's refusal to confirm or deny that it has relevant records is referred to as a "Glomar" response, and "[s]uch responses are appropriate only when 'confirming or denying the existence of records would' itself reveal protected information.'" Montgomery v. IRS, 330 F. Supp. 3d 161, 168 (D.D.C. 2018) (emphasis in original) (quoting Bartko v. DOJ, 62 F. Supp. 3d 134, 141 (D.D.C. 2014)(quoting Nation Magazine v. U.S. Customs Serv., 71 F.3d 885, 893, 315 U.S. App. D.C. 177 (D.C. Cir. 1995))). However, because of our conclusion in this matter, we will not reach the propriety of a Glomar response in this context.

Here, the *statute* relied upon by OCA is the Federal Rule of Criminal Procedure 6(e)(2) ("Rule 6(e)" Fed. R. Crim. Proc. 6(e)(2)). Fed. R. Crim. Proc. 6(e)(2)(A) provides that "[n]o obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B)[,]" which lists the following persons:

> **(i)** a grand juror;
> **(ii)** an interpreter;
> **(iii)** a court reporter;
> **(iv)** an operator of a recording device;
> **(v)** a person who transcribes recorded testimony;
> **(vi)** an attorney for the government; or
> **(vii)** a person to whom disclosure is made under Rule 6(e)(3)(A)(ii) or (iii)[.]

According to OCA, Fed. R. Crim. Proc. 6(e)(2) satisfies the basic "statute" requirement of Exemption 6, and the "[t]he U.S. Circuit Court of Appeals for the District of Columbia (D.C. Circuit) has specifically stated that '[a]ll grand jury subpoenas . . . fall within FOIA's third exemption.'" *See* OCA Resp. at 2.

On January 24, 2019 you submitted the instant appeal, in which you assert that Fed. R. Crim. Proc. 6(e)(2) is inapplicable to OCA since the classes of persons within that office does not fall within any of the categories listed in Fed. R. Crim. Proc. 6(e)(2)(B). Focusing on just two of the seven categories of persons listed, you argue that OCA is not acting as an "attorney for the government" as the term is defined. You next argue that the OCA, in complying with a subpoena, "is not assisting an attorney for the government 'in performing that attorney's duty to enforce federal criminal law . . . .'" You conclude by asserting that "recipients of grand jury subpoenas are under no obligation of secrecy under" Rule 6(e).

This Office contacted OCA on January 24, 2019, and notified the agency of your appeal. On February 7, 2019, OCA provided this Office with a response to your appeal.[2] In its response, OCA reaffirmed its use of Exemption 6 and argued that Rule 6(e) prevented it from disclosing grand jury records if they exist.

<u>Discussion</u>

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.

[2] A copy of OCA's response is attached.

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).

This decision shall review the argument OCA has advanced in support of its position that it properly denied your request in its entirety.

Exemption 6 - Disclosure Prohibited by Other Law

Your request sought grand jury subpoenas, received by OCA after September 22, 2018, for specified matters. Citing to Exemption 6, OCA did not confirm or deny that it maintains responsive records. OCA's position in its denial letter and its response to this appeal has been that grand jury subpoenas may be withheld categorically under Exemption 6.

Proper use of Exemption 6 requires a separate statute that prohibits disclosure of information. Here, OCA relies on Rule 6(e). We accept that Rule 6(e) qualifies as a statute that can authorize the withholding of records under Exemption 6. *See Fund for Constitutional Gov't v. Nat'l Archives & Records Serv.*, 656 F.2d 856, 867 (D.C. Cir. 1981) (concluding that Rule 6(e) of Federal Rules of Criminal Procedure, regulating disclosure of matters occurring before grand jury, satisfies the federal equivalent of Exemption 6's "statute" requirement).

We do not, however, agree that Rule 6(e) is applicable to this matter. As your appeal acknowledges, the plain text of Rule 6(e)(2)(A) states that only those listed in Rule 6 (e)(2)(B) are bound by the secrecy requirements of Rule 6(e).[3] OCA's response to this appeal does not cite to a specific category listed under Rule 6 (e)(2)(B) that it believes OCA qualifies as.

In support of its position, OCA proffers a case, *Lopez v. DOJ*, 393 F.3d 1345, 1350 (D.C. Cir. 2005). OCA characterizes *Lopez* as supporting a categorical rule that "[a]ll grand jury subpoenas . . . fall within FOIA's," Exemption 6. That is too broad of a reading.

We read *Lopez* as holding that those that are bound by Rule 6 (e)'s obligation to not disclose may not disclose grand jury subpoenas. The agency that received the request for grand jury records in *Lopez* was the Department of Justice, which had acted as the prosecutor in the related grand jury proceeding. As the prosecutor, the DOJ was bound by the secrecy obligations created by Rule 6(e) because the prosecutor falls under the enumerated category of "government attorney." *See* Fed. R. Crim. Proc. 6(e)(2)(B)(vi).

In order to properly withhold under Exemption 6, OCA must rely on an underlying statute. OCA has proffered Rule 6 (e) as such a statute. Rule 6 (e)(2)(A) specifies that "[n]o obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B)." OCA does

[3] *See* Fed. R. Crim. Proc. 6(e)(2)(A) ("No obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B).")

not qualify as any category listed under Rule 6(e)(2)(B). Rule 6 (e) therefore does not prevent OCA's disclosure, and as a result, cannot be used as a basis to withhold under Exemption 6 of DC FOIA.

Conclusion

Based on the foregoing, we remand this matter to OCA to, within ten business days of the date of this decision, conduct a search, review responsive documents, and produce non-exempt portions of records consistent with the guidance in 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 the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Kenneth Liebowitz, Assistant General Counsel, OCA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-66

February 11, 2019

VIA ELECTRONIC MAIL

Ms. Jodie Fleischer

RE: FOIA Appeals 2019-66

Dear Ms. Fleischer:

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 Metropolitan Police Department ("MPD") to your request for records.

Background

On January 25, 2019, you submitted a FOIA request to MPD, asking to be provided the names of arrested individuals associated with a series of public incident reports identified by your request.

MPD denied your request on the grounds that disclosure of the requested records would constitute a clearly 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").

This Office received your appeal on January 28, 2019. On appeal you challenge MPD's response – arguing that the individuals have been charged with crimes that have been entered into the DC Superior Court system. In support of release, you argue MPD has provided similar information in other instances, outside of FOIA. Your appeal did not present any authorization from the individuals associated with your request.

MPD sent this Office a response to your appeal on February 8, 2019.[1] MPD reaffirms its earlier position that under Exemptions 2 and 3, any responsive records would be exempt because release of law enforcement records to a third party requester "would constitute a clearly unwarranted invasion of privacy."

Discussion

[1] A copy of the MPD's response is attached.

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.

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. *See Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 2

Exemption 2 prevents disclosure of "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Under Exemption 2, 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*. Your appeal argues that MPD has released similar information, outside of the FOIA context, and should therefore release the withheld records here.[2] Here, we find that under DC FOIA, disclosing the names of individuals related to arrest records to someone without written authorization implicates a privacy interest, because "as a categorical matter . . . a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy. . . ." *Reporters Comm. For Freedom of Press*, 489 U.S. at 780.

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *Id*. at 772-773. In the context of DC FOIA, a record is deemed to be of "public interest" if it would shed light on an agency's conduct. *See Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

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[2] We do not find that MPD's release of similar information in other contexts estops MPD from asserting a privacy interest here. *See Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 257-59 (D.D.C. 2005) (finding a privacy interest in redacted portion of arrest records concerning private individuals even though documents were previously distributed in unredacted form to symposium participants).

> 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.

Id. at 1492-93.

In reviewing the balancing of interests, concerning the release of "rap sheets" of individuals, the Supreme Court stated "that when the request seeks no 'official information' about a Government agency, but merely records that the Government happens to be storing, the invasion of privacy is 'unwarranted.'" *Reporters Comm. For Freedom of Press*, 489 U.S. at 780.

We find the instant request to fall under this rubric. We find that releasing the names of the individuals arrested would not shed light on MPD's performance of its duties. Further, the release to a third party of police records, under DC FOIA, identifying named individuals would be an unwarranted invasion of privacy and would not "contribute *significantly* to public understanding of the operations or activities of the government." *Berger v. I.R.S.*, 487 F. Supp. 2d 482, 505 (citations omitted); *see also Hines v. D.C. Bd. of Parole*, 567 A.2d 909, 912 (D.C. 1989) (noting that "courts are generally reluctant 'to give third parties access to the presentence investigation report prepared for some other individual or individuals'").

As a result of the existence of a privacy interest and the lack of a demonstrated public interest in the records at issue, MPD properly withheld the records, pursuant to Exemption 2 of the DC FOIA.

Segregability

The last issue to be considered is whether MPD could disclose remaining portions of the records, if they exist, in a way that would still 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. *See 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).

It appears that you have already received a copy of the public incident reports listed in your request; thus, your request appears to be limited to the disclosure of the names of the individuals associated with the public incident reports. As a result, redaction of potential records would not protect the privacy interest contemplated by Exemption 2 here, because by its nature your request is for personally identifiable information. *See 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).

Conclusion

Based on the forgoing, 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 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: 2019-67

February 12, 2019

VIA ELECTRONIC MAIL

Ms. Gabriele Ulbig

RE: FOIA Appeals 2019-67

Dear Ms. Ulbig:

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"), regarding the response you received from the District of Columbia Housing Authority ("DCHA") to a request submitted to that agency by your organization, LiUNA Mid Atlantic Regional Organizing Coalition ("LiUNA MAROC").

On October 12, 2018, an employee from LiUNA MAROC submitted a request to DCHA seeking "the certified payroll records for the contractor ACM and any subcontractors for their work on the project located at 1150 12th Street, NW, Washington, DC."

On November 2, 2018, DCHA sent you an email[1] advising you that it had completed its search for the records your organization requested and did not find any responsive records.

You appealed DCHA's response to this Office on January 28, 2019. Your submission cites to the "Davis Bacon Act," 40 U.S.C. § 3142 and 29 CFR § 5.5(a)(3), as authority for the requirement for the submission of certified payroll records. Your appeal argues that because these laws mandate the creation of the type of records you requested, the District government should maintain them.[2] Your appeal contains an attachment that lists abatement contracts, which identifies DCHA as the facility owner of the property listed in your request and ACM as a contractor. Since DCHA indicated that it did not possess any responsive records, we construed your appeal as a challenge to the adequacy of DCHA's search.

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[1] We note that DCHA's denial letter did not appear to contain notice of your appellate rights, as required by DC Official Code § 2-533(a)(3) and 1 DCMR § 407.2(c).

[2] You have filled three related appeals for a similar request to other District agencies, which this Office docketed as FOIA Appeals, 2019-68 (Department of Employment Services), 2019-69 (Department of General Services), and 2019-70 (Deputy Mayor for Planning and Economic Development).

We notified DCHA of your appeal on January 28, 2019 and requested a response. To date, DCHA has not responded to this appeal. As such, we have no basis to determine that DCHA has conducted an adequate search of the records you requested.

Based on the foregoing, we remand this matter to DCHA to conduct a search, review responsive documents, and produce non-exempt portions of records to you, within five business days of the date of this decision. If no responsive records are found in its subsequent search, DCHA shall describe to you the search that it conducted. Please note that you are free to challenge DCHA's subsequent response by separate appeal to this Office.

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. *See* D.C. Official Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: Edward Kane, Deputy General Counsel, DCHA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-68

February 11, 2019

VIA ELECTRONIC MAIL

Ms. Gabriele Ulbig

RE: FOIA Appeals 2019-68

Dear Ms. Ulbig:

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"), regarding the response you received from the Department of Employment Services ("DOES") to a request submitted to that agency by your organization, LiUNA Mid Atlantic Regional Organizing Coalition ("LiUNA MAROC").

Background

On November 5, 2018, an employee from LiUNA MAROC submitted a request to DOES seeking "the certified payroll records for the contractor ACM and any subcontractors for their work on the project located at 1150 12th Street, NW, Washington, DC."

On November 8, 2018, DOES sent you a letter advising you that it had completed a search for the records your organization requested and did not find any responsive records.

You appealed DOES's response to this Office on January 28, 2019. Your submission cites to the "Davis Bacon Act," 40 U.S.C. § 3142 and 29 CFR § 5.5(a)(3), as authority for the requirement for the submission of certified payroll records. Your appeal argues that because these laws mandate the creation of the type of records you requested, that the District government should maintain them.[1] Although you state that the "DC government" should maintain the requested records, your appeal does not specify why you believe DOES, specifically, would possess these records.

Since DOES indicated that it did not possess any responsive records, we construed your appeal as a challenge to the adequacy of DOES's search.

[1] You have filled three related appeals for a similar request to other District agencies, which this Office docketed as FOIA Appeals 2019-67 (District of Columbia Housing Authority), 2019-69 (Department of General Services), and 2019-70 (Office of the Deputy Mayor for Planning and Economic Development).

We notified DOES of your appeal and requested that it respond, which it did on January 28, 2019 in an email which you were copied on. In its response, DOES stated that it conducted a search of the two record repositories in which responsive records would be stored, if they existed. DOES's response reiterated that this search did not identify responsive documents.

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. *See id.* at § 2-534. Under the DC FOIA, an agency is required to disclose public records only if they were "owned, used, in the possession of, or retained by a public body." *Id.* at § 2-502(18).

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).

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).

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). The 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).

DOES's response described the search that it conducted. DOES first determined that responsive records, if they exist would be located in either the First Source Online Registration and Reporting System ("FORRS") or an internal database/shared drive. DOES has indicated that it conducted a search of FORRS and of its internal database, and has stated that its search did not yield any responsive records. We accept DOES's representations and find that it made a reasonable determination as to the locations of the records you requested and conducted an adequate search of these locations for responsive records.

Your appeal argues generally that the District government should possess responsive records, but does not specify why you believe DOES specifically would possess these records. DC FOIA is agency specific. *See* 1 DCMR § 402 ("A request for a record of an agency may be made orally or in writing and shall be directed to the particular agency."). 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).

Conclusion

Based on the foregoing, we affirm DOES's response.

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: Department of Employment Services, General Counsel, DOES (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-69

February 11, 2019

VIA ELECTRONIC MAIL

Ms. Gabriele Ulbig

RE: FOIA Appeals 2019-69

Dear Ms. Ulbig:

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"), regarding the response you received from the Department of General Services ("DGS") to a request submitted to that agency by your organization, LiUNA Mid Atlantic Regional Organizing Coalition ("LiUNA MAROC").

Background

On November 5, 2018, an employee from LiUNA MAROC submitted a request to DGS seeking "the certified payroll records for the contractor ACM and any subcontractors for their work on the project located at 1150 12th Street, NW, Washington, DC."

On November 7, 2018, DGS sent you an email advising you that it had completed its search for the records your organization requested and did not find any responsive records. DGS further advised you that the records that you requested might be maintained by the District of Columbia Housing Authority or the Office of the Deputy Mayor for Planning and Economic Development.

You appealed DGS's response to this Office on January 28, 2019. Your submission cites the "Davis Bacon Act," 40 U.S.C. § 3142 and 29 CFR § 5.5(a)(3), as authority for the requirement for the submission of certified payroll records. Your appeal argues that because these laws mandate the creation of the type of records you requested, the District government should maintain them.[1] Your appeal does not specify why you believe DGS specifically would possess these records.

Since DGS indicated that it did not possess any responsive records, we construed your appeal as a challenge to the adequacy of DGS's search.

[1] You have filled three related appeals for a similar request to other District agencies, which this Office docketed as FOIA Appeals 2019-67 (District of Columbia Housing Authority), 2019-68 (Department of Employee Services), and 2019-70 (Office of the Deputy Mayor for Planning and Economic Development).

We notified DGS of your appeal and requested that it respond, which it did on February 1, 2019.[2] In its response, DGS stated that it conducted a search and reiterated its position that no responsive records were retrieved. DGS's response further indicates that while the property listed in your request was owned and renovated by the District, the project that was on the property was not a DGS project – such that DGS would not maintain the records that you requested.

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. *See id.* at § 2-534. Under the DC FOIA, an agency is required to disclose public records only if they were "owned, used, in the possession of, or retained by a public body." *Id*. at § 2-502(18).

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).

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).

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

[2] A copy of DGS's response is attached.

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). The 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).

DGS has represented that it had a program analyst assist its FOIA Officer in conducting a search of DGS's records. In further correspondence with this Office, DGS indicated that it determined that certified payrolls are located in a database called "Prolog." DGS's search of Prolog did not yield any responsive records. We accept DGS's representations and find that it made a reasonable determination as to the locations of the records you requested and conducted an adequate search of these locations for responsive records.

Your appeal argues generally that the District government should possess responsive records, but does not specify why you believe DGS specifically would have these records. DC FOIA is agency specific. *See* 1 DCMR § 402 ("A request for a record of an agency may be made orally or in writing and shall be directed to the particular agency."). 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). In the course of its search DGS determined that the property listed in your organization's request was owned by the District, and renovated, but that the renovation was not DGS's project. We accept DGS's representation that the property listed in your request was not within DGS's purview, and that DGS does not maintain responsive records.

Conclusion

Based on the foregoing, we affirm DGS's response.

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: Department of General Services (DGS)
C. Vaughn Adams, FOIA Officer
Via email

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-70

February 11, 2019

VIA ELECTRONIC MAIL

Ms. Gabriele Ulbig

RE: FOIA Appeals 2019-70

Dear Ms. Ulbig:

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"), regarding the response you received from the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") to a request submitted to that agency by your organization, LiUNA Mid Atlantic Regional Organizing Coalition ("LiUNA MAROC").

Background

On November 19, 2018, an employee from LiUNA MAROC submitted a request to DMPED seeking "the certified payroll records for the contractor ACM and any subcontractors for their work on the project located at 1150 12th Street, NW, Washington, DC."

On December 20, 2018, DMPED sent you a letter advising you that it had completed its search for the records your organization requested and did not find any responsive records. DMPED further advised you that the property listed in your request was not one maintained by DMPED and that it was not a property "within the Office's portfolio."

You appealed DMPED's response to this Office on January 28, 2019. Your submission cites the "Davis Bacon Act," 40 U.S.C. § 3142 and 29 CFR § 5.5(a)(3), as authority for the requirement for the submission of certified payroll records. Your appeal argues that because these laws mandate the creation of the type of records you requested, the District government should maintain them.[1] Your appeal does not specify why you believe DMPED specifically would possess these records.

Since DMPED indicated that it did not possess any responsive records, we construed your appeal as a challenge to the adequacy of DMPED's search.

[1] You have filled three related appeals for a similar request to other District agencies, which this Office docketed as FOIA Appeals 2019-67 (District of Columbia Housing Authority), 2019-68 (Department of Employment Services), and 2019-69 (Department of General Services).

We notified DMPED of your appeal and requested that it respond, which it did on February 4, 2019.[2] In its response, DMPED described the search it conducted to locate records responsive to your search and reiterated its position that none were retrieved.

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 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).

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).

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).

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). The 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

[2] A copy of DMPED's response is attached.

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).

DMPED has represented that its FOIA Officer conducted a search of all of DMPED's record repositories and did not locate any responsive records. In the course of its search DMPED determined that the property listed in your organization's request is not one that is maintained by DMPED and is not one that is in DMPED's portfolio. Further, DMPED has represented that it does not generally maintain any payroll records of the type described in your request. We accept DMPED's foregoing representations and find that it made a reasonable determination as to the likely locations of records responsive to your request and conducted an adequate search of these locations.

Your appeal argues generally that the District government should possess responsive records, but does not specify why you believe DMPED specifically would possess these records. DC FOIA is agency specific. *See* 1 DCMR § 402 ("A request for a record of an agency may be made orally or in writing and shall be directed to the particular agency."). 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). We accept DMPED's representation that the property listed in your request is not within DMPED's purview, and that it would not maintain responsive records.

<u>Conclusion</u>

Based on the foregoing, we affirm DMPED's response.

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: Molly Hofsommer, FOIA Officer, DMPED (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-71

February 12, 2019

VIA ELECTRONIC MAIL

Mr. Steve Thompson

RE: FOIA Appeals 2019-71

Dear Mr. Thompson:

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") improperly withheld records you requested under the DC FOIA.

Background

On January 8, 2019, you submitted a request to OCFO for emails and letters between Spectrum Gaming Group and employees of OCTO. On January 29, 2019, OCFO granted your request in part and provided responsive records, some of which were redacted. OCFO denied your request in part, withholding some documents in their entirety. Both the redactions and the withholdings were made by OCFO pursuant to D.C. Official Code § 2-534(a)(4) ("Exemption 4"), and specifically the deliberative process privilege.

You appealed OCFO's response to this Office on January 29, 2019. Your appeal argues generally that OCFO has applied Exemption 4 too broadly. Specifically, you argue that the two records withheld in their entirety are unlikely to consist entirely of advice or recommendations and should be partially released. Additionally, you note that some of the redacted emails predated an October 3, 2019, contract and therefore predate the consultative process.

This Office contacted OCFO on January 29, 2019, and notified the agency of your appeal.[1] On February 7, 2019, OCFO provided this Office with a response to your appeal, including a *Vaughn* Index and a copy of the withheld documents for our *in camera* review.[2] In its response, OCFO reasserted, generally, its position that Exemption 4 protects the withheld and redacted records from disclosure. OCFO's response argues that the email chain that predates the consulting contract constitute a deliberation, in and of itself, and is therefore properly withheld under Exemption 4.

Discussion

[1] OCFO requested and was granted an extension to respond to the appeal.
[2] A copy of OCFO's response and *Vaughn* Index are attached.

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.

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).

Exemption 4

In order to adjudicate your appeal, OCFO provided us with a *Vaughn* Index and the 5 documents of withheld and redacted documents at issue for our *in camera* review.

Exemption 4 vests public bodies with discretion to withhold "inter-agency or intra-agency memorandums 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). As a result, Exemption 4 encompasses the deliberative process privilege. *See McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011). 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.*

This decision will review the applicability of Exemption 4 to the five records identified by OCFO's *Vaughn* Index.

<u>Document 1</u>

The first document was released in part and redacted in part. The document is an email chain dating between October 2-3, 2018 that discusses a prospective letter contract between OCTO and Spectrum Gaming. The email chain concludes with the execution of the letter contract on October 3, 2018.

As a threshold requirement for Exemption 4, the record must be an "inter-agency or intra-agency" record. Spectrum Gaming is an entity outside of the District government. Accordingly, for the deliberative process privilege of Exemption 4 to apply to emails between OCFO

employees and Spectrum Gaming employees, an exception must exist to the threshold requirement that the emails are "inter-agency or intra-agency" documents. One such exception recognized by courts is the consultant corollary. The consultant corollary applies when the government has hired a consultant to effectively function as a government employee. In these instances, documents exchanged between the government and consultants do not lose the protections available under Exemption 4. *See, e.g., Dep't of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 11 (2001).

Having reviewed the withheld emails, we find that the consultant corollary does not apply to Document 1. As previously stated, the communications between OCFO and Spectrum Gaming predate the October 3, 2018, consultation contract. Under *Klamath*, "the communications of a third-party consultant or contractor, hired to provide expert advice to an agency, may be considered inter-agency or intra-agency for the purposes of Exemption 5[3]" if the outside consultant does not have an interest in the outcome of the decision making process and is not in competition with the other parties. *Physicians Comm. for Responsible Med. v. NIH*, 326 F. Supp. 2d 19, 30 (D.D.C. 2004) (rejecting characterization of grant application as an inter-agency document where applicant "was in competition with other grant applicants and had a self-interest in being awarded the grant").

In the communications contained in Document 1, Spectrum Gaming was not yet hired to provide expert advice to OCFO. To the extent that there was a decision making process related to which consultant to hire, Spectrum Gaming had an interest in the outcome of that decision. As a result, any communication with Spectrum Gaming contained in Document 1 related to that decision is not embraced by the consultant corollary and cannot be considered an "inter-agency or intra-agency" document. Therefore, Exemption 4 cannot be a basis for redactions in Document 1.

<u>Document 2</u>

Document 2 is an email chain that was released in part; the content beyond the first page was redacted in its entirety.[4]

After an *in camera* review, we agree with OCFO that much of the body of the emails is deliberative and pre-decisional. *Coastal States Gas Corp.*, 617 F.2d at 866. All of the emails predate a report and concern the creation of that report, and are therefore pre-decisional. The majority of the substance of the redacted emails is deliberative in nature, in that the text consists of a back and forth of questions and answers that relate to the decision making process. As such, most of the bodies of the emails contained in Document 2 is properly redacted as deliberative under Exemption 4.

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[3] Exemption 5 of the federal FOIA is the equivalent of Exemption 4 of DC FOIA.

[4] OCFO's response challenges that you did provide a statement in your appeal as to the specifics of why you challenge the redactions in the document. However, given that most of the pages are entirely redacted, it is difficult to see what sort of substantive argument you would have been equipped to make. Nonetheless, we read your appeal as challenging whether all of the material in the redacted pages are covered by the deliberative process privilege.

Additionally, because these documents are deliberative in nature, the identities of the authors are also protectable under the deliberative process privilege, such that the signature blocks and headers of the emails are properly redacted. *Cofield v. City of LaGrange*, 913 F. Supp. 608, 616-17 (D.D.C. 1996) (finding internal routing notations possibly leading to identification of employees involved in decision making protectable) (citing *Brinton v. Dep't of State*, 636 F.2d 600, 604 (D.C. Cir. 1980) ("If these agency records are indeed deliberative, it is appropriate to apply Exemption 5 to the documents themselves, as well as to the names of their authors."))

We find, however, that not all portions of the emails in Document 2 are deliberative in nature. Portions of many of the emails are concerned solely with scheduling and availability of personnel. These portions are not "subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." *Coastal States Gas Corp.*, 617 F.2d at 867. Revealing these portions would not reveal the thought process of the agency or the substance of its decision-making process. That is to say, these portions of the records are pre-decisional but are not deliberative, and are therefore not embraced by the privilege or Exemption 4. Pursuant to D.C. Official Code § 2-534(b), these portions of the record are reasonably segregable and should be partially released.

Documents 3, 4 and 5

The email chain contained in Document 3 was released to you in full, but the attachments, Documents 4 and 5, were withheld in their entirety pursuant to the deliberative process privilege.

Document 4 is a draft document that contains numerous comments and edits. We accept OCFO's representation that this document was used to facilitate the creation of Spectrum Gaming's final report, and find that it is pre-decisional. Further, we find the state of the draft makes Document 4 deliberative. *See Dudman Commc'ns Corp. v. Dep't of the Air Force*, 815 F.2d 1565, 1569 (D.C. Cir. 1987) (protecting draft document because disclosure of editorial process would "stifle the creative thinking and candid exchange of ideas necessary to produce good historical work."). Document 4 is pre-decisional and deliberative and is therefore embraced by the deliberative process privilege and may be withheld pursuant to Exemption 4.

Document 5 is a spreadsheet containing a compilation of comparative data relating to lotteries across the country. We accept OCFO's representation that this document was used to facilitate the creation of Spectrum Gaming's final report, and find that it is pre-decisional. The chart appears to be entirely factual in nature. Generally, purely factual material is not deliberative. However, the act of distilling a large amount of factual information into a compilation can represent an editorial judgement which if disclosed would reveal the deliberative process. *E.g. Montrose Chem. Corp. v. Train*, 491 F.2d 63, 68 (D.C. Cir. 1974) ("To probe the summaries of record evidence would be the same as probing the decision-making process itself.").We find that Document 5 amounts to such a distillation, and is deliberative in nature. Document 5 is pre-decisional and deliberative and is therefore embraced by the deliberative process privilege and may be withheld pursuant to Exemption 4.

Conclusion

Based on the foregoing, OCFO's response to your request is affirmed in part and is remanded in part. Within ten business days from the date of this decision, OCFO shall review the documents it withheld and disclose to you nonexempt portions in accordance with the guidance in 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 the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Chaia Morgan, 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: 2019-72

February 14, 2019

VIA ELECTRONIC MAIL

Ms. Natalie Schreyer

RE: FOIA Appeals 2019-72

Dear Ms. Schreyer:

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"), challenging the response the Office of Unified Communications ("OUC") provided to your request.

Background

On January 21, 2019, you submitted a FOIA request to OUC for call logs for domestic violence and domestic assault for the years 2015 through 2018. Your request specified a series of categories of data that you wanted the log to contain, and requested a separate document that explained the content of the log. OUC denied your request pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2"), asserting that disclosure would constitute a clearly unwarranted invasion of personal privacy.

On January 31, 2019, this Office received and docketed your appeal. On appeal, you clarify that you were not asking for the audio recordings, the names, the phone numbers, or characteristics of the caller. You argue that your request does not implicate "personal identifying information."

On February 13, 2019, OUC provided its response to your appeal.[1] In its response, OUC states that it had reconsidered its position, and on February 13, 2019, provided you with a call log that contains 51,034 events. The log identifies the time a given call came in, the type of call it was, and the priority level used by responders in arriving to the location.[2] OUC clarified to you that OUC does not maintain a record of why a case was closed, the history of the suspect, or information relating to orders and warrants. OUC's response to the appeal indicated that it was still withholding the location of the caller and location of the call for service, because release would constitute a clearly unwarranted invasion of personal privacy, and the implicated privacy interest was not outweighed by a public interest.

[1] A copy of OUC's response, declaration, and *Vaughn* index are attached.
[2] We find the portion of your appeal related to the records OUC originally withheld, but has now provided to you, as moot.

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.

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).

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 a clearly unwarranted invasion of personal privacy requires a balancing of individual privacy interests against the public interest in disclosing the records. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989).

OUC asserts that it continues to withhold the location of the caller and the location of the call for service to protect personal privacy interests pursuant to Exemption 2. In general, there is a sufficient privacy interest in personally identifiable information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Information such as names, phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See*, *e.g*., *Department of Defense v. FLRA*, 510 U.S. 487, 500-501 (1994) ("We are reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions.").

Your appeal states that you are "NOT asking for personal identifying information." However, home addresses are considered personally identifiable information, and given that the subject matter of the request is domestic violence and assault, there appears to be a high likelihood that the addresses withheld by OUC would be home addresses. As a result, we agree with OUC's assertion that the addresses related to the call implicate a privacy interest.

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of DC FOIA, a record is deemed to be of "public interest" if it would shed light on an agency's conduct. *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

> 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.

Id. at 1492-93.

Here, it is difficult to see what the disclosure would reveal of OUC's conduct – be that the disclosure of the location of the caller or the location to which the call was dispatched. Here, the personal privacy interest outweighs the public interest in disclosure.

Conclusion

Based on the foregoing, we affirm OUC's decision and 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: Ingrid Bucksell, FOIA Officer, 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: 2019-73

February 26, 2019

VIA ELECTRONIC MAIL

Ms. Jamie Mendoza

RE: FOIA Appeals 2019-73

Dear Ms. Mendoza:

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") withholding of records you requested under DC FOIA.

Background

On September 25, 2018, you submitted a request to MPD for records related to the investigation of a homicide that occurred in 1997. On February 6, 2019, MPD granted your request in part, releasing records that were already publicly available, and denied your request in part, withholding its investigative documents on the basis that the records are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3(A)(i)") because disclosure of the investigatory records compiled for law enforcement purposes would interfere with enforcement proceedings. MPD's denial indicated that the homicide case is considered an ongoing criminal investigation and disclosure of its investigative records would impede enforcement efforts. MPD's denial further cited to D.C. Official Code § 2-534(a)(3)(B) ("Exemption 3(B)"), asserting that release of the responsive records would affect the rights of an accused person to a fair trial.

On appeal, you challenge MPD's denial of your FOIA request, stating without specificity that some of the material that you have asked for has been previously released and is "within the public domain in one form or another." Further, you indicate that the lead investigators from the homicide are participating in your organization's documentary project, and your organization would like to illustrate their narratives with the records you request. Finally, you state that you are reducing the scope of records that you are requesting, and have re-submitted a new FOIA request for these records.

On February 21, 2019, MPD responded to your appeal in a letter to this Office in which it reasserted its position that the records are protected from disclosure by Exemption 3(A)(i) and

Exemption 3(B).[1] In support of this position, MPD attached a declaration from MPD's Commander of the Criminal Investigations Division. The declaration proffered that MPD's investigation into the murder is ongoing and that release of the requested records could adversely affect MPD's enforcement efforts.

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).

Exemption 3(B)

Exemption 3(B) exempts from disclosure investigatory records that were compiled for law enforcement purposes and whose disclosure would "deprive a person of a right to a fair trial or an impartial adjudication." D.C. Official Code § 2-534(a)(3)(B). The standard for withholding under this exemption has been interpreted to require "(1) that a trial or adjudication is pending or truly imminent; and (2) that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings." *Washington Post Co. v. DOJ*, 863 F.2d 96, 102 (D.C. Cir. 1988).

Here, MPD has not clearly illustrated that there is a "pending or truly imminent" adjudication related to the 1997 homicide investigation that is the subject of your request. As a result, MPD has failed to establish that Exemption 3(B) supports the withholding of responsive records.

Exemption 3(A)(i)

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). "[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies." *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C.

[1] MPD's response is attached for your reference.

2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency's decision. *Id.*

The records you seek here were compiled for the law enforcement purpose of investigating a homicide, and MPD has asserted that the criminal investigation pertaining to the homicide is ongoing. As a result, MPD has met the threshold requirements for invoking Exemption 3(A)(i), and our analysis turns on whether disclosure would interfere with enforcement proceedings.

That the case is old does not overcome the purpose of Exemption 3(A)(i), which is to protect against releasing investigatory details that could interfere with law enforcement efforts. *See Dickerson v. DOJ*, 992 F.2d 1426, 1432 (6th Cir. 1993) (finding that an investigation into 1975 disappearance remained ongoing and therefore was still "prospective" law enforcement proceeding.) On appeal, you argue generally that some information has been publicly released. However, MPD has provided a declaration of the Commander of its Criminal Investigations Division that states that the investigation is ongoing and that disclosing the records you requested could reveal the direction of its ongoing investigation and allow involved persons to tailor their testimony. In light of the statutory purpose of Exemption 3(A)(i), we find that MPD was justified in withholding from disclosure the investigatory records you requested.[2]

Conclusion

Based on the foregoing, we affirm 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.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

[2] Although MPD's invocation of Exemption 3(A)(i) to justify withholding is supported by precedent, we note that this exemption, like others, is discretionary. Due to the age of the case, MPD may determine that the benefits of disclosure outweigh the potential harm to the ongoing law enforcement proceeding. MPD, as the agency responsible for the ongoing investigation, is in the best position to assess the potential impact of disclosure. Therefore, we defer to MPD's determination regarding the exercise of its discretion whether to disclose or continue to withhold its investigative records related to the homicide.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-74

February 27, 2019

VIA ELECTRONIC MAIL

Ms. Betsy Wolf

RE: FOIA Appeals 2019-74

Dear Ms. Wolf:

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 the grounds that the Office of the Deputy Mayor for Education ("DME") failed to respond to your request for records.

On January 4, 2019, you submitted a request to DME for emails and communications relating to a report entitled "My School DC Lottery Program Evaluation of School Year 2017-2018."

On February 11, 2019, you submitted an appeal to this Office on the grounds that as of that date you had not received a response from DME. On February 26, 2019, DME sent us a response, which you were copied on. DME asserted that the My School DC Lottery program is housed in the Office of the State Superintendent of Education, and that DME does not possess any records responsive to your request.

Since your appeal was based on DME's failure to provide a response to your request, and the agency has provided you with a response, we consider your appeal to be moot and hereby dismiss it. You are free to challenge DME's response by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Keisha Mims, Interim Chief of Staff, DME (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-75

February 27, 2019

VIA ELECTRONIC MAIL

Ms. Betsy Wolf

RE: FOIA Appeals 2019-75

Dear Ms. Wolf:

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 the grounds that the Office of the Deputy Mayor for Education ("DME") failed to respond to your request for records.

On January 3, 2019, you submitted a request to DME for a report entitled "My School DC Lottery Program Evaluation of School Year 2017-2018."

On February 11, 2019, you submitted an appeal to this Office on the grounds that as of that date you had not received a response from DME. On February 26, 2019, DME sent us a response, which you were copied on. DME asserted that the My School DC Lottery program is housed in the Office of the State Superintendent of Education, and that DME does not possess any records responsive to your request.

Since your appeal was based on DME's failure to provide a response to your request, and the agency has provided you with a response, we consider your appeal to be moot and hereby dismiss it. You are free to challenge DME's response by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Keisha Mims, Interim Chief of Staff, DME (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-76

February 27, 2019

VIA ELECTRONIC MAIL

Mr. Ernest Johnson

RE: FOIA Appeals 2019-76

Dear Mr. Johnson:

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 the grounds that the Department of General Services ("DGS") closed, without explanation, your February 4, 2019, request for records relating to a building.

On February 11, 2019, this Office docketed your appeal and asked DGS to provide us with a response. DGS responded on February 22, 2019,[1] stating that it had initially closed your request as duplicative of a substantively similar request that was made on your behalf on January 30, 2019.[2] DGS's response indicates that it provided responsive records to you on February 14, 2019.

We accept DGS's representation that it is has conducted a search and provided you with responsive documents. Your appeal was based on DGS's closure of your request without explanation or the production of records, and DGS has now provided you with records and an explanation that it does not intend to withhold records. As a result, we consider your appeal to be moot and hereby dismiss it; however, you are free to challenge DGS's substantive response by separate appeal to this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: C. Vaughn Adams, Senior Assistant General Counsel, DGS (via email)

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[1] A copy of DGS's response is attached.
[2] It appears that the requests were both made in your name, but under different accounts with different corresponding email addresses which may have contributed to the miscommunication.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-77

February 27, 2019

VIA ELECTRONIC MAIL

Ms. Betsy Wolf

RE: FOIA Appeals 2019-77

Dear Ms. Wolf:

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 the grounds that the District of Columbia Public Schools ("DCPS") failed to respond to your request for personnel data reports from fiscal years 2015-2018.

On February 11, 2019, this Office docketed your appeal and asked DCPS to provide us with a response. Your appeal notes that you made your request on November 14, 2018, but had not yet received the requested information. Your appeal notes that you believe a similar request was granted to a separate requester.

DCPS responded on February 19, 2019.[1] DCPS's response indicated that on February 13, 2019, it provided records that are responsive to part of your request.[2] DCPS's response explained that the third party request referenced in your appeal is dissimilar to your request, because your request is broader in scope and specifically requests data which may be protected. DCPS's response indicates that it is working on your request but has been delayed due to DCPS consulting with other agencies to determine which requested data fields implicate privacy interests pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2").

We accept DCPS's representation that it is has conducted a search and is reviewing the responsive records. Nonetheless, we conclude based on the record before us that DCPS's failure to timely produce records constitutes a constructive denial under DC FOIA. D.C. Official Code § 2-532(e).

As a result, we remand this matter to DCPS to within 10 days of this decision to make a determination regarding the application of Exemption 2, and to provide you with all non-exempt portions of records. You are free to challenge DCPS's subsequent response by separate appeal to this Office.

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[1] A copy of DCPS's response is attached.

[2] We dismiss the portion of your appeal concerning these records as moot. You may challenge DCPS's February 13, 2019, production by separate appeal.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Eboni Govan, Attorney Advisor, DCPS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-78

February 27, 2019

VIA ELECTRONIC MAIL

Dr. Daryao Khatri

RE: FOIA Appeals 2019-78

Dear Dr. Khatri:

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 University of the District of Columbia ("UDC") has charged you fees for the production of records that are not responsive to your request.

On August 20, 2018, you sent a request to UDC for "Personnel Action Forms 50 and 52" from the "2004-2009 and 2012-2018 calendar years." On September 10, 2018, UDC advised you that in accordance with the applicable fee schedule, the production of the 2012-2018 portion of your record request would cost $2,092.[1] You responded to that estimate on September 12, 2018, by stating that you were only willing to pay $250, and that you wanted records exclusively from 2004-2009. You appealed to this Office, UDC's failure to provide records in response to your stated willingness to pay, in an appeal docketed as FOIA Appeal 2019-34.

After you filed the appeal, UDC responded to your request and indicated that it would provide a portion of responsive records. The documents to be produced would be partially redacted and would be limited by the search time for which you had agreed to pay. As a result, this Office dismissed FOIA Appeal 2019-34 as moot.

On February 11, 2019, you filed the instant appeal. In this appeal you have indicated that UDC provided you with records in response to your request and that you have paid a $250. UDC produced approximately 130 pages.[2] You challenge this production, on the basis that your request was for certain records relating to adjunct faculty, and the majority of records produced to you were for full-time faculty member. You assert that portions of the records provided to you were "irrelevant and not what [you] requested." Your appeal argues that a certain "Form 52" was

[1] DC FOIA permits agencies to charge fees for searches. D.C. Official Code § 2-532(b).
[2] The produced records compressed multiple forms from different years into singular documents which were organized by name. The records within each document appear to have been produced out of paginated order.

not provided in the production. Further, your appeal asserts your belief that what was produced did not take "an effort worth $250."[3]

UDC responded to this appeal on February 27, 2019. UDC's response indicated that despite some of the records being provided to you being facially about full-time faculty, that those individuals may have been an adjunct at some point in the five year period of your request. UDC interpreted such forms as being responsive to your request. UDC's response indicates that the university's records are not fully digitized, and that searches require "additional efforts" to "identify adjunct faculty files." UDC claims that it is "not the University's job to evaluate qualitatively the records it has identified and considers responsive" and characterized your request as not being for "only those PAFs which evidence adjunct assignments." UDC's response ends by acknowledging your status as a litigant against the university.[4]

Discussion

We do not agree with UDC's characterization of your request. On its face, your request is for specified personnel forms (Forms 50 and 52) of adjunct faculty. UDC's response indicates that its search may "suffer from an overly expansive understanding of the term 'adjunct faculty.' " We agree.

This Office appreciates that it takes effort to evaluate records to determine if they are responsive. UDC has described its search in general terms, and explained the challenges in assembling responsive materials. Your appeal asserts that the majority of the records provided to you facially appear to be false positives which are not responsive to your request. We have reviewed the production, and it appears that you are correct that some of the records that were produced to you were not responsive, in that they were personnel records for non-adjunct professors.

UDC claims that it "cannot respond to [your] original request as formulated because the University does not maintain records in such a way that allows us to identify and retrieve the records sought . . ." However, in order for a request to be so ambiguous as to allow an agency to claim that they cannot respond, it requires the request to be written such that "identification and location of the record by the agency" would require an "unreasonable amount of effort." *See* 8B DCMR § 806.5; 1 DCMR § 402.5. We do not find the determination of whether a professor at a university was an adjunct or full-time would require an "unreasonable amount of effort" that

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[3] This Office's jurisdiction is limited to review the denial of the inspection of records pursuant to D.C. Official Code § 2-537. Absent some showing of bad faith, we will not evaluate an agency's good faith representation of the amount of effort used by its staff in responding to a FOIA request.

[4] As in FOIA Appeal 2017-93, which also involved UDC, the status of a requester as a litigant is irrelevant to the DC FOIA analysis. *E.g.*, *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 . . . .").

would preclude UDC from identifying which Form 50s are responsive records.[5] *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.").

Conclusion

UDC has claimed a voluminous number of responsive records exists that would cost thousands of dollars to produce in its entirety. You have not yet committed to paying for the entire production. However, you have paid $250 for a portion of this set of public records.

We remand this matter to UDC to reprocess your request and make a new production of responsive records. UDC should determine what portion of the production it has made to you constitutes false positives (in that they are Form 50s of non-adjunct faculty) and credit that to the efforts of its new production of records. This production should be of responsive records and should utilize in good faith the portion of fees UDC has already charged for non-responsive records.

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: Jeffery N. Zinn, Assistant General Counsel, UDC (via email)

[5] We note that within the Form 50s that were provided in this appeal that boxes 5-A, 6-A, 7 and 15 appear to in some instances refer to the status of an individual as an adjunct professor (whereas some of the non-responsive records refer to persons with the titles associate professor, professor, and professor chair).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-79

February 27, 2019

VIA ELECTRONIC MAIL

Mr. Michael Keenan

RE: FOIA Appeals 2019-79

Dear Mr. Keenan:

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 the grounds that the Metropolitan Police Department ("MPD") closed your request without providing responsive records.

Your appeal was docketed by this Office on February 12, 2019. This Office notified MPD and requested that it respond to your appeal. That same day, MPD responded and indicated that responsive documents were sent to you on February 6, 2019. MPD indicated to this Office that after receiving this appeal, it retransmitted the records to you.

Since your appeal was based on MPD's closing of your request without providing responsive records, and the agency has now represented that it has provided you with those records, we consider your appeal to be moot and hereby dismiss it. You are free to challenge MPD's response by 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.

Sincerely,

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: 2019-80

March 4, 2019

VIA ELECTRONIC MAIL

Mr. Justin Herring

RE: FOIA Appeals 2019-80

Dear Mr. Herring:

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 body-worn camera footage that you requested.

Background

You submitted a request to MPD for all body-worn camera footage related to an incident that occurred on October 20, 2018.

On February 12, 2019, MPD denied your request in full, stating that responsive records were being withheld pursuant to D.C. Official Code § 2-534(2A)(B) ("Exemption 2A(B)"), on the basis that the records related to an incident involving domestic violence.

This Office received your appeal on February 14, 2019, and contacted MPD for its response. On appeal you argue that MPD's denial pursuant to Exemption (2A)(B) is improper because of your belief that the incident captured on the footage is not related to domestic violence. Your appeal argues that the footage is related to a false report of domestic violence. In support of these contentions, you have attached a notarized affidavit from a third-party. The affiant states that he or she was not the victim of sexual assault and that he or she "**recant[s] any and all statements that [he or she] made to any Metropolitan Police Officer or Official on October 20, 2018**."

MPD sent this Office a response to your appeal on February 22, 2019,[1] reaffirming its position that the records are exempt in their entirety under Exemption (2A)(B). MPD asserts that a review of the paperwork indicates that the arrest was classified at the time as related to domestic violence. MPD's response indicates that if you believe the arrest documents to be in error, that you should contact MPD's records office.

Discussion

[1] A copy of MPD's response is attached.

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).

Exemption 2A(B) exempts from disclosure, "(2A) Any body-worn camera recordings recorded by the Metropolitan Police Department . . . (B) Related to an incident involving domestic violence as defined in § 4-551(1)[2] . . . ."

You have asserted that (i) no domestic violence took place, (ii) the related arrest was unfounded, and (iii) the police reports are inaccurate. You have offered an affidavit in which a third-party recants earlier statements to MPD. The affiant states that the earlier statements were made "under duress," that the affiant was "intoxicated" and that the affiant "lacked the capacity to make such statements."

Nonetheless, MPD has confirmed on appeal that the arrest was classified as involving domestic violence. Here, we accept MPD's representation that the arrest was related to an incident involving allegations of domestic violence. There is a lack of precedent or judicial guidance in the application of Exemption 2A(B). Absent such precedent, we are reluctant to construe Exemption 2A(B) as requiring a final adjudication of allegations of domestic violence.

Conclusion

Based on the forgoing, we affirm MPD's 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)

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[2] "'Domestic violence' means a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner, dating partner, or family member. The term "domestic violence" includes physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This consists of any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone." D.C. Official Code § 4-551(1).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-81

March 4, 2019

VIA ELECTRONIC MAIL

Mr. Kevin O. Williams

RE: FOIA Appeals 2019-81

Dear Mr. Williams:

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"), pertaining to a request you submitted to the Department of Corrections ("DOC").

On March 16, 2018, you submitted a request to DOC for documents related to a particular job position that DOC posted and filled in 2016. One of the records you sought was a document showing "that interviews for the position were or were not held [and if not held] a copy of the signed documentation stating so." DOC responded to your request on April 30, 2018, advising you, in relevant part, that it did not locate any written record of an interview associated with the position you identified.

On May 4, 2018, you submitted another request to DOC for "documentation showing what [sic] that the second review in fact took place and what the second prescore was" with respect to the same position you identified in your March 16, 2018 request. You also sought "signed documentation showing that the agency did in fact fill the position as quoted." DOC did not respond to your May 4, 2018 request.

On October 16, 2018, you appealed to this Office. The appeal was docketed as FOIA Appeal 2019-10. We notified DOC of your appeal, and the agency responded on October 29, 2018. In its response, DOC stated that due to an oversight, it failed to respond to your May 4, 2018 request for "signed documentation showing that the Director did in fact fill the position" you specified. DOC further stated that it was attaching to its response the "Selection Certificate, i.e., document found to be responsive to both [your] appeal and [your] May 4, 2018 email request." On December 6, 2018, you attempted to request a different record by filing another appeal with this Office, and were informed that a request for a new record would have to be directed to DOC.

On January 9, 2019, DOC informed you that your statement of dissatisfaction that the record provided to you was signed by an official other than the DOC Director, did not constitute a proper FOIA request. On January 25, 2019, you responded to DOC's response with dissatisfaction – and made an additional request for "all documentation listing the personnel

that the DOC Agency Director has requested and the DCHR Director has approved to serve as a HR Authority or an Alternate HR Authority during the timeframe of January 1, 2016-December 31, 2016."

DOC responded to this appeal by stating that your request for "signed documentation by the Director, as the agency head," is a request for a record that DOC does not possess and is not obligated to create.

We agree with DOC, DOC is not obligated create records for you. *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."); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36; FOIA Appeal 2017-95. "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). Accordingly, we affirm DOC's response to your December request and dismiss that portion of your appeal.

Your appeal appears to challenge DOC's failure to respond to the new request that you made on January 25, 2019. Your appeal was filed on February 14, 2019, which is less than the 15 business days DOC had to respond to your request. D.C. Official Code § 2-532(c)(1). At the time your appeal was filed, the January request had not been constructively denied. D.C. Official Code § 2-534(e). However, DOC's response did not address this request, and your emails to this Office suggest that DOC has not yet responded to it. It is unclear if DOC realized that you made a new request in January. The January request was made in response to DOC's denial of your December request, and in the many subsequent emails you continuously refer to the "below listed FOIA Request." This may have been a source of confusion. In any event, we find that your January 25, 2019 request has since been constructively denied. D.C. Official Code § 2-534(e).

We remand this matter to DOC to conduct a search for "all documentation listing the personnel that the DOC Agency Director has requested and the DCHR Director has approved to serve as a HR Authority or an Alternate HR Authority during the timeframe of January 1, 2016-December 31, 2016." DOC shall notify you of the results of this search. However, as with your December request, DOC is not obligated to create a record that you believe should exist if in fact no such record exists.

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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Segun Obebe, Records, Information & Privacy Officer, DOC (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-82

March 4, 2019

VIA ELECTRONIC MAIL

Mr. Matt Otis

RE: FOIA Appeals 2019-82

Dear Mr. Otis:

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 the grounds that the Metropolitan Police Department ("MPD") failed to respond to a request for body-worn camera footage that you made in October 2018.

On February 14, 2019, this Office received your appeal and asked MPD to provide us with a response. MPD responded on February 22, 2019,[1] stating that your request "did not reach the FOIA office for processing."

Based on the record before us, we conclude that MPD has received your request and has not yet provided a response. We therefore remand this matter to MPD to complete its search and disclose to you any non-exempt, responsive records. You may challenge MPD's subsequent response by separate appeal to this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia in the Superior Court of the District of Columbia in accordance with 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: 2019-83

March 5, 2019

VIA ELECTRONIC MAIL

Ms. Valerie Smith

RE: FOIA Appeals 2019-83

Dear Ms. 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"), challenging the response the Office of Unified Communications ("OUC") provided to your request.

Background

On January 23, 2019, you submitted a FOIA request to OUC for the "911 telephone recording for a call" made on December 6, 2018. Your request did not have authorization from the 911 caller attached. On February 5, 2019, OUC denied your request in part and granted your request in part. OUC withheld the recording of the 911 call pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2"), to protect the personal privacy interest of the caller. OUC granted your request in part by providing the time that the call came into the call center.

On February 15, 2019, this Office received and docketed your appeal. On appeal you characterize your request as being for the "internal Dispatch Audio from" the call. Your appeal did not have authorization from the caller attached or make a substantive argument concerning the implicated privacy interest.

On February 25, 2019, OUC provided its response to your appeal.[1] In its response, OUC argues that your appeal is for a different record than your initial request, and that your appeal should be dismissed as not ripe.[2] Additionally, OUC maintains that the withheld recording and the new recordings requested in your appeal are all exempt from disclosure pursuant to Exemption 2. OUC further asserts that it lacks the technical capacity to redact portions of audio recordings. Therefore, it must withhold the recording in its entirety to protect the personal privacy interest.

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[1] A copy of OUC's response is attached.

[2] We agree with OUC that your appeal requests records different from your original request. A new request should have been made to OUC. However, the analysis concerning your original request and your new request are similar enough that as a matter of efficiency this decision will address both.

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).

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 individual privacy interests against the public interest in disclosing the records. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989).

You have not demonstrated the consent of the 911 caller or the first responders. OUC asserts that it has withheld responsive records to protect the personal privacy interests of the caller and responders pursuant to Exemption 2. In general, there is a sufficient privacy interest in personally identifiable information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Information such as names, phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See*, *e.g.*, *Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994). OUC asserts that this information is communicated in the 911 call and responder communications. As a result, we agree with OUC's assertion that the calls are subject to protection from disclosure pursuant to Exemption 2 because the recordings contain an individual's name and phone number.

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of DC FOIA, a record is deemed to be of "public interest" if it would shed light on an agency's conduct. *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

> 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.

Id. at 1492-93.
You have not offered a public interest on appeal. It is unclear how providing the unredacted audio of a 911 call and the communications of responders would reveal the conduct of OUC to a degree that would outweigh the relevant privacy interest. As a result, the information protected pursuant to Exemption 2 may be withheld from disclosure.

The final issue to address is segregability. Under D.C. Official Code § 2-534(b), even when an agency establishes that an exemption is applicable, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). The phrase "reasonably segregable" is not defined under the 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, OUC maintains that it lacks the technical capacity to excise the protected information from the responsive audio recordings. Courts have repeatedly upheld that records were not reasonably segregable where the agency attested that it lacked the technical capability to edit the records in order to disclose non-exempt portions. *See, e.g., Milton v. DOJ*, 842 F. Supp. 2d 257, 259-61 (D.D.C. 2012) (holding that an agency did not have to produce telephone conversation because it lacked the technological capacity to redact exempt portions of the recordings); *Mingo v. DOJ*, 793 F. Supp. 2d 447, 454-55 (D.D.C. 2011). Consequently, we accept OUC's representation that the responsive records are not segregable due to OUC technical limitations.

<u>Conclusion</u>

Based on the foregoing, we affirm OUC's decision and 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: Ingrid Bucksell, FOIA Officer, 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: 2019-84

March 5, 2019

VIA ELECTRONIC MAIL

Ms. Kat Zangari

RE: FOIA Appeals 2019-84

Dear Ms. Zangari:

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 records you requested pertaining to a named law enforcement officer were improperly withheld by the Office of Police Complaints ("OPC").

Background

On February 12, 2019, you made a request on behalf of a client to OPC for records of complaints, investigation, and discipline relating to an identified law enforcement officer. On February 14, 2019, OPC denied your request.

On February 15, 2019, you filed this appeal. On appeal, you argue that your client has a "right under the Sixth Amendment of the U.S. Constitution to confront the witnesses against him." You cite to *Brady v. Maryland*, 373 U.S. 83 (1963), as a basis that requires the government to produce the records you requested. Your appeal did not make an argument concerning the privacy rights asserted by OPC.

OPC sent this Office a response to your appeal on February 22, 2019. [1] OPC's response stated that without admitting or denying the existence of the requested records, the disclosure thereof would constitute an unwarranted invasion of personal privacy. In its response, OPC cited D.C. Official Code § 2-534(a)(2) ("Exemption 2") and D.C. Official Code § 2-534(a)(3)(C) ("Exemption 3(C)") as grounds for withholding any existing records from disclosure.

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 the OPC's response it attached.

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) 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 are considered "investigatory records" under Exemption 3(C) if they were compiled pursuant to an investigation focused 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 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)).

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[2] Exemption 7(C) under the federal FOIA is the equivalent of Exemption 3(C) under the DC FOIA.

Here, we find that there is a sufficient privacy interest associated with a police officer who is being investigated for wrongdoing based on allegations. "[I]nformation in an investigatory file tending to indicate that a named individual has been investigated for suspected criminal activity is, at least as a threshold matter, an appropriate subject for exemption under [(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 withholding 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. We find that the same interest is present with respect to civil disciplinary sanctions that could be imposed on a law enforcement officer.

With regard to the second part of the privacy analysis under Exemption 3(C), we examine whether the public interest in disclosure is outweighed by the individual privacy interest at issue. On appeal, you do not offer an argument concerning the public interest. Instead you argue solely that the requested records would be valuable to your client in litigation. Generally, the interest of a private litigant is not considered a public interest in the context of FOIA. *See, e.g.*, *Horowitz v. Peace Corps*, 428 F.3d 271, 278 (D.C. Cir. 2005).[3]

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.

Id. at 1492-93.

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[3] To the extent that your client has a Sixth Amendment right to view the requested records as *Brady* materials, as you argued he does, it is not clear to us that DC FOIA is the proper mechanism (or this the proper venue) to resolve that argument.

In the instant matter, while disclosing the records at issue might shed light on OPC's performance of its statutory duty to investigate complaints against police officers, we find that this public interest does not outweigh the invasion of the individual police officer's privacy interests under Exemptions 3(C) and (2) of the DC FOIA.[4] The records you seek may consist of mere allegations of wrongdoing, the disclosure of which could have a stigmatizing effect regardless of accuracy.

We say "may consist" because OPC has maintained that they will neither confirm nor deny whether complaint records exist relating to the law enforcement officer about whom you seek records. This type of response is referred to as a "Glomar" response, and it is warranted when the confirmation or denial of the existence of responsive records would, in and of itself, reveal information exempt from disclosure. *Wilner v. Nat'l Sec. Agency*, 592 F.3d 60, 68 (2nd Cir. 2009). Glomar responses have been found appropriate when the requested records would reveal whether an employee was investigated for misconduct.[5]

We find the use of a Glomar response here to be justified because if a written complaint or subsequent investigation against the officer you have named exists, identifying the written records would likely result in the harm that the DC FOIA exemptions were intended to protect; no amount of redaction could protect the privacy interest at issue. *See Mueller v. U.S. Dep't of the Air Force*, 63 F. Supp. 2d 738, 744 (E.D. Va. 1999) (noting that when requested documents relate to a specific individual, "deleting [her] name from the disclosed documents, when it is known that she was the subject of the investigation, would be pointless").

Conclusion

Based on the forgoing we affirm the decision issued by OPC and dismiss your appeal.

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[4] We also note that any public interest that would be served by disclosing the wrongdoings of police officers might be served by the Office of Police Complaints' ("OPC") annual, redacted, online report of all sustained findings of misconducts, along with extensive data regarding the type of allegations made and the demographics of complainants. *See Antonelli v. Fed. Bureau of Prisons*, 591 F. Supp. 2d 15, 25 (D.D.C. 2008). OPC's annual reports may be found at http://policecomplaints.dc.gov/page/annual-reports-for-OPC

[5] *See also Beck v. DOJ*, 997 F.2d 1489 (D.C. Cir. 1993) (affirming Glomar response to request for records concerning misconduct by two DEA agents); *Lewis v. DOJ*, 733 F. Supp. 2d 97, 112 (D.D.C. 2010) ("If an individual is the target of a FOIA request [for investigative records], the agency to which the FOIA request is submitted may provide a 'Glomar' response, that is, the agency may refuse to confirm or deny the existence of records or information responsive to the FOIA request on the ground that even acknowledging the existence of responsive records constitutes an unwarranted invasion of the targeted individual's personal privacy."); *Smith v. FBI*, 663 F. Supp. 2d 1, 5 (D.D.C. 2009) ("Because . . . confirmation of records concerning '[a]ny adverse action or disciplinary reports on [named] Agent . . .' would necessarily reveal the precise information Exemption 6 shields, the Glomar response was proper.").

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: Alicia Yass, Legal Counsel, OPC (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-85

March 8, 2019

VIA ELECTRONIC MAIL

Ms. Kristin Cauffiel

RE: FOIA Appeals 2019-85

Dear Ms. Cauffiel:

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 Metropolitan Police Department ("MPD") to your request for records.

Background

On July 13, 2018, and July 27, 2018, you submitted two similar FOIA requests to MPD. The requests were for body-worn camera ("BWC") footage related to a June 9, 2018, incident involving an individual insured by your company.

On February 12, 2019, MPD granted your request in part and denied it in part, by providing you with redacted footage. The redactions were made on the grounds that disclosure of unredacted portions of the video would constitute a clearly unwarranted invasion of personal privacy under D.C. Official Code § 2-534(a)(2) ("Exemption 2").

This Office received your appeal on February 19, 2019. On appeal, you challenge MPD's redactions of the "ID for the owner of the black SUV and the identity of the party that appears in the front passenger seat of the black SUV." You argue that this information "directly relates" to your investigation, because the identities and number of the persons involved in the incident are in dispute. Your appeal did not contain an authorization from the "owner of the black SUV" and did not make an argument related to the privacy interest implicated by MPD's denial letter.

MPD sent this Office a response to your appeal on February 26, 2019.[1] MPD's response indicated that its staff would review the footage to "ascertain if other persons are depicted," and convey that information to you. In subsequent correspondence with this Office, MPD reaffirmed that the redactions of the identification for the individual(s) in the footage were made under Exemptions 2.

Discussion

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[1] A copy of the MPD's response is attached.

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.

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. *See Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 2

Exemption 2 prevents disclosure of "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Under Exemption 2, 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*. Here, we find that under DC FOIA that there is a privacy interest in a unredacted BWC footage containing a private person's identification card that was captured by a law enforcement officer in the course of his or her duty. Disclosure of such a record to someone who does not possess authorization would be an invasion of privacy because "as a categorical matter . . . a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy. . . ." *Reporters Comm. For Freedom of Press*, 489 U.S. at 780.

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *Id*. at 772-773. In this matter, you suggest that the unredacted footage would be helpful in resolving an insurance claim dispute. However, the interest of a private litigant is not considered a public interest in the context of FOIA. *See, e.g.*, *Horowitz v. Peace Corps*, 428 F.3d 271, 278 (D.C. Cir. 2005).

In the context of DC FOIA, a record is deemed to be of "public interest" if it would shed light on an agency's conduct. *See Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

> 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.

Id. at 1492-93.

We find that releasing unredacted BWC footage here would not shed light on MPD's performance of its duties. Further, the release to a third party of police records, under DC FOIA, identifying named individuals would be an unwarranted invasion of privacy and would not "contribute *significantly* to public understanding of the operations or activities of the government." *Berger v. I.R.S.*, 487 F. Supp. 2d 482, 505 (citations omitted); *see also Hines v. D.C. Bd. of Parole*, 567 A.2d 909, 912 (D.C. 1989) (noting that "courts are generally reluctant 'to give third parties access to the presentence investigation report prepared for some other individual or individuals'").

As a result of the existence of a privacy interest and the lack of a demonstrated public interest in the records at issue, MPD had sufficient justification for the redaction of the released footage, pursuant to Exemption 2 of the DC FOIA.

Conclusion

Based on the forgoing, 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 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: 2019-86 & 2019-87

March 8, 2019

VIA ELECTRONIC MAIL

Mr. Mathew Reeder

RE: FOIA Appeals 2019-86 & 2019-87

Dear Mr. Reeder:

This letter responds to the administrative appeals 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 Metropolitan Police Department ("MPD") failed to respond to your January 2, 2019, requests for records relating to a December 20, 2018, vehicle accident.

On February 21, 2019, this Office received your appeals and asked MPD to provide us with a response. MPD responded on February 28, 2019,[1] stating that (i) one of your requests had been misrouted and MPD was now working on producing the requested records, and (ii) your request for body-worn camera footage was being processed by MPD's vendor and would be produced. MPD further indicated that both categories of records should be produced to you within the next five days.

Based on the record before us, we conclude that MPD's failure to timely respond to your requests constitutes a constructive denial under DC FOIA. D.C. Official Code § 2-532(e). Nevertheless, we accept MPD's representations that it is attempting to process your request. We therefore remand this matter to MPD and direct it to disclose to you any non-exempt, responsive records that is has already reviewed, within 5 business days of the date of this decision, and to continue producing records to you on a rolling basis. You may challenge MPD's subsequent response by separate appeal to this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

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[1] Copies of MPD's responses are attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-88

March 11, 2019

VIA ELECTRONIC MAIL

Ms. Valerie Smith

RE: FOIA Appeals 2019-88

Dear Ms. Smith:

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 challenge the Fire and Emergency Medical Services Department's ("FEMS") denial of your request for a paramedic report and emergency medical system patient care report related to an ambulance pick up on December 6, 2018.

Your February 21, 2019, appeal asserts that you were a nurse for the patient whose records you are requesting, and you believe this makes you "privileged to the patient's information. . ." You state that the requested records are "needed due to employment decisions . . . ." Your appeal did not contain an authorization from the patient whose records you are requesting.

This Office contacted FEMS, and notified the agency of your appeal. FEMS responded on February 22, 2019, advising that patient care information cannot be disclosed to you, because the records sought involve medical information protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPPA").[1] D.C. Official Code § 2-534(a)(6) ("Exemption 6") exempts from disclosure information that is protected by other statutes, including HIPPA. Further, FEMS indicated that release of the records to an unauthorized third party would constitute a clearly unwarranted invasion of personal privacy pursuant to D.C. Official Code § 2-534(a)(2).

We agree with FEMS. This Office rejects the premise that an "interaction as a health care provider" entitles a person without authorization to further access to patient medical records for non-medical purposes. Instead, FEMS instructed you that your request could be granted if you submitted the appropriate authorization documents. Without appropriate authorization, the information you seek may be withheld under either Exemption 2 or Exemption 6.

We affirm FEMS's decision to withhold the records that you requested and dismiss your appeal.

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[1] FEMS's response is attached.

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: Angela Washington, Information and Privacy Officer, FEMS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-89

March 11, 2019

VIA ELECTRONIC MAIL

Mr. Harry Gural

RE: FOIA Appeals 2019-89

Dear Mr. Gural:

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 Housing and Community Development ("DHCD") to your request for records.

Background

On January 31, 2019, you submitted a FOIA request to DHCD. The request was for rental housing records, including "RAD-9" forms, related to a series of addresses.

On February 21, 2019, DHCD granted your request in part and denied it in part, by providing you with redacted records. The redactions were of the names of tenants and the unit numbers associated with rent increases. The redactions were made on the grounds that disclosure of unredacted portions of the forms would constitute a clearly unwarranted invasion of personal privacy under D.C. Official Code § 2-534(a)(2) ("Exemption 2").

This Office received your appeal on February 22, 2019. On appeal, you challenge DHCD's redactions because they made the "information useless." Your appeal did not make an argument related to the privacy interest implicated by DHCD's denial letter.

DHCD sent this Office a response to your appeal on March 1, 2019.[1] DHCD's response reaffirmed that the redactions of identifying information were made pursuant to Exemptions 2.

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

[1] A copy of the DHCD's response is attached.

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.

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. *See Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 2

Exemption 2 prevents disclosure of "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Under Exemption 2, 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*. DHCD asserts that it has redacted the records to protect the personal privacy interests of the tenants pursuant to Exemption 2. In general, there is a sufficient privacy interest in personally identifiable information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Information such as names, phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See, e.g., Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994).

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *Reporters Committee*, 489 U.S. at 772-773. In this matter, you suggest that unredacted records would be helpful to you. Your appeal does not make an argument concerning how the release of the records unredacted would serve the public interest.

In the context of DC FOIA, a record is deemed to be of "public interest" if it would shed light on an agency's conduct. *See Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

> 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.

Id. at 1492-93.

We find that releasing the names of tenants and unit numbers associated with rent adjustments would not shed light on DHCD's performance of its duties. Further, the release to a third party of identifying information would be an unwarranted invasion of privacy and would not "contribute *significantly* to public understanding of the operations or activities of the government." *Berger v. I.R.S.*, 487 F. Supp. 2d 482, 505 (citations omitted).

As a result of the existence of a privacy interest and the lack of a demonstrated public interest in the records at issue, DHCD had sufficient justification for the redaction of the released records, pursuant to Exemption 2 of the DC FOIA.

Conclusion

Based on the forgoing, we affirm DHCD'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 the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Tonya Condell, Assistant 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: 2019-90

March 11, 2019

VIA ELECTRONIC MAIL

Mr. Steve Thompson

RE: FOIA Appeals 2019-90

Dear Mr. Thompson:

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") improperly redacted records you requested under the DC FOIA.

Background

On February 15, 2019, you submitted a FOIA request to OCFO for "Copies of . . . Spectrum Gaming Group's response to DC RFQ No. 18-RFQ-006 and the related cover letter." On February 25, 2019, OCFO disclosed two responsive records with redactions. The redactions were made to certain commercial and financial information pursuant to D.C. Official Code § 2-534 (a)(1) ("Exemption 1").[1]

This Office received your appeal on February 25, 2019. Your appeal challenges the redactions to the two documents, arguing that the OCFO has not represented that "disclosure of the redacted information would result in substantial harm to Spectrum's competitive position."

This Office contacted OCFO and notified the agency of your appeal. On March 1, 2019, OCFO provided this Office with a response to your appeal, which included a Vaughn index and unredacted copies of the two disputed records for this Office's *in camera* review.[2] In its response, OCFO reasserted that Exemption 1 was appropriate, stating that the redacted portions contain (i) the identities of particular individuals, (ii) pricing information not incorporated into the final agreement, and (iii) commercial information relating to clients that is not publicly known.

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[1] Exemption 1 exempts from disclosure "[t]rade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained."
[2] A copy of OCFO's response and Vaughn index are 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.

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 OCFO's application of Exemption 1 in redacting two documents.[3] To withhold information under Exemption 1, the information must be: (1) a trade secret or commercial or financial information; (2) that was obtained from outside the government; and (3) would result in substantial harm to the competitive position of the person from whom the information was obtained. D.C. Official Code § 2-534(a)(1). The D.C. Circuit has defined a trade secret, for the purposes of the federal FOIA, "as a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). The D.C. Circuit has also instructed that the terms "commercial" and "financial" used in the federal FOIA should be accorded their ordinary meanings. *Id* at 1290.

Exemption 1 has been "interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury." *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); s*ee also*, *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989). In construing the second part of this test, "actual harm does not need to be demonstrated; evidence supporting the existence of potential competitive injury or economic harm is enough for the exemption to apply." *Essex Electro Eng'rs, Inc. v. United States Secy. of the Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010). *See also McDonnell Douglas Corp. v. United States Dep't of the Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004) (The exemption "does not require the party . . . to prove disclosure certainly would cause it substantial competitive harm, but only that disclosure would 'likely' do so. [citations omitted]").

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[3] OCFO made redactions to the names and contact information of persons in the document titled "Spectrum's Response to DC RFQ No, 18-RFQ-006." We find that these redactions were appropriate pursuant to Exemption 2, D.C. Official Code § 2-534(a)(2), as release would constitute a clearly unwarranted invasion of privacy.

On appeal, you allege that the disclosed records should not be redacted because OCFO has not shown that the release of the information would cause competitive harm to Spectrum.

Commercial pricing information has been found to be exempt under FOIA. *See People for Ethical*
Treatment of Animals v. U.S. Dep't of Agric., No. CIV. 03 C 195-SBC, 2005 U.S. Dist. Lexis 10586, at *7 (D.D.C. May 24, 2005) ("insights into the company's operations, give competitors pricing advantages over the company, or unfairly advantage competitors in future business negotiations."); *Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976). (finding that insights into the operational strengths and weaknesses of a business allow others to engage in "[s]elective pricing, market concentration, expansion plans, . . . take-over bids[,] . . . bargain[ing] for higher prices … unregulated competitors would not be similarly exposed."). Accordingly, we find OCFO justified in redacting, pursuant to Exemption 1, the pricing information contained the document titled "Spectrum's Response to DC RFQ No, 18-RFQ-006."

After reviewing the two records *in camera* and based on the OCFO's representations, we find that the remaining redactions were made to (i) commercial information, (ii) that was obtained from outside of the government, (iii) which is not publicly known, and (iv) the disclosure of which is likely to cause competitive harm by revealing to competitors unfair insight into the company's business operations. Therefore, we find that Exemption 1 provides sufficient support for the OCFO's remaining redactions of the first and second documents.

Conclusion

Based on the foregoing, we affirm OCFO'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 the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Chaia Morgan, 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: 2019-91

March 12, 2019

VIA ELECTRONIC MAIL

Ms. Traci Williams

RE: FOIA Appeals 2019-91

Dear Ms. Williams:

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"), regarding the response you received from the Department of Insurance, Securities and Banking ("DISB") to a request for records that you submitted.

Background

On February 19, 2019, you submitted a request to DISB seeking records dating to September 11, 2001, related to a workers' compensation claim.

On February 22, 2019, DISB sent you an email advising you that it had completed its search and did not find any responsive records.

Your appeal was received by this Office on February 26, 2019. Your appeal requests "confirmation" that "neither the (1) District of Columbia's Department of Insurance, Securities & Banking, (2) District of Columbia Workers' Compensation, (3) DOES nor (4) DCIGA has documentation of the letters written, checks disbursed and actions taken on their behalf by GFMS using District of Columbia Insurance Guaranty Association letterhead and financial instruments."[1]

Since DISB indicated that it did not possess any responsive records, we construed your appeal as a challenge to the adequacy of DISB's search.

We notified DISB of your appeal and requested that it respond, which it did on February 27, 2019.[2] In its response, DISB described the search it conducted to locate records responsive to your search and reiterated its position that none were retrieved.

[1] We will note that this appeal is concerned solely with DISB's response to the request initially sent to DISB. To the extent that you believe another agency (such as DOES) has responsive records, then you must make a request to that agency.
[2] A copy of DISB'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 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 if they were "retained by a public body." D.C. Official Code § 2-502(18).

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. *See Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

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. *See 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. *See 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). The 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 a subsequent communication to this Office, DISB indicated that the records you requested are not the type normally maintained by DISB in the course of its business. Nonetheless, DISB's response indicated that it determined that if responsive records existed they would most likely be found in the Compliance Analysis Division. DISB's response indicated that a search by staff of the Compliance Analysis Division of electronic and paper files did not locate any responsive records. We accept DISB's representations and find that it made a reasonable determination as to the likely locations of records responsive to your request and conducted an adequate search of these locations.

Conclusion

Based on the foregoing, we affirm DISB's response.

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: Claudine Alula, 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: 2019-93

March 12, 2019

VIA ELECTRONIC MAIL

Mr. Ricardo Saavedra

RE: FOIA Appeals 2019-93

Dear Mr. Saavedra:

This letter responds to the administrative appeal you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you are challenging the response provided by the Department of Transportation ("DDOT") to your request.

On February 21, 2019, DDOT received your request, which states, "We request [a DDOT employee's] statement on the traffic incident. An email or phone call . . . would suffice."

On February 27, 2019, DDOT denied your request. In its denial DDOT stated that it did not possess responsive documents. In your appeal, you state in pertinent part: "It is in good faith that a citizen of the District of Columbia obtain written or verbal testimony on what a public servant – who is entrusted to safeguard the public – establish his perspective on the event in question."

This Office did not notify DDOT of your appeal, because there is sufficient information in your filing for us to render a decision on the matter. You requested a record from DDOT. DDOT responded by stating that it was unable to identify any records which were responsive to your request, i.e. that it was unable to locate any such statement. Your appeal does not appear to challenge the adequacy of DDOT's search, and we have no reason to question its adequacy.[1]

Based on the foregoing, we affirm DDOT'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: Karen Calmeise, FOIA Officer, DDOT (via email)

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[1] We note that your appeal is tantamount to a request for testimony. DC FOIA does not require DDOT to create records or answer questions. *See Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985) ("FOIA creates only a right of access to records, not a right to personal services.").

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-94

March 13, 2019

VIA ELECTRONIC MAIL

Mr. Ricardo Saavedra

RE: FOIA Appeals 2019-94

Dear Mr. Saavedra:

This letter responds to the administrative appeal you have 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 are challenging the response provided by the Department of Transportation ("DDOT") to your request.

On February 15, 2019, DDOT received your request for "the traffic pattern to substantiate" your claim related to an accident at a specified cross street. On February 27, 2019, DDOT granted your request, providing you with 7 pages of documents. In your appeal, you challenge DDOT's response, stating that the response "does not provide . . . sufficient documents to answer the question presented by this writer."

This Office notified DDOT of your appeal, and the agency provided a response on March 6, 2019.[1] You made a request that DDOT construed as a request for records. DDOT responded by providing you with responsive records and by attempting follow up communications to answer your questions. DDOT was not and is not required by DC FOIA to answer your questions or create records that it does not already possess.[2] Your appeal does not appear to challenge the adequacy of DDOT's search, and we have no reason to question its adequacy. Instead, your appeal is limited to your contention that DDOT has not adequately answered your questions.

Based on the foregoing, we affirm DDOT's decision and 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: Karen Calmeise, FOIA Officer, DDOT (via email)

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[1] A copy of DDOT's response is attached to this decision.
[2] *See Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985) ("FOIA creates only a right of access to records, not a right to personal services.").

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-95

March 18, 2019

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeals 2019-95

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 the grounds that the District of Columbia Housing Authority ("DCHA") failed to respond to your February 7, 2019 request for records relating to a written determination made by the agency.

This Office contacted DCHA on March 4, 2019, and notified the agency of your appeal. DCHA responded on March 5, 2019, advising us that DCHA had conducted a search and provided you with documents responsive to your request.[1]

Because your appeal was based on DCHA's failure to respond to your request, and the agency has now responded, we consider your appeal to be moot and it is hereby dismissed. You are free to assert any challenge, by separate appeal to this Office, to the substantive response DCHA sent 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: Ryan Martini, FOIA Officer, DCHA (via email)

[1] A copy of DCHA'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: 2019-96

March 19, 2019

VIA ELECTRONIC MAIL

Mr. Robert Ryan

RE: FOIA Appeals 2019-96

Dear Mr. Ryan:

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 the grounds that the Office of Contracting and Procurement ("OCP") failed to respond to your January 31, 2019 request for "all bid results for construction contracts awarded from January 1, 2008 to December 31, 2018."

This Office contacted OCP on March 5, 2019, and notified the agency of your appeal. OCP responded to this appeal on March 11, 2019, advising us that OCP had conducted a search and provided you with a letter. [1] OCP's response indicated that its search had yielded tens of thousands of pages of responsive records and its letter requested that you clarify the nature of your request.

Because your appeal was based on OCP's failure to respond to your request, and the agency has now responded, we consider your appeal to be moot and it is hereby dismissed. You are free to assert any challenge, by separate appeal to this Office, to the substantive response OCP sent you.[2]

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: D. Ryan Koslosky, Assistant General Counsel, OCP (via email)

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[1] A copy of OCP's response is attached.
[2] On March 12, 2019, you sent a response to OCP, and sent a copy to this Office, indicating that you did not wish to narrow the scope of your request. It is unclear whether there has been further communications between OCP and yourself concerning the scope of your request, but you are free to file a new appeal if you continue to challenge OCP's response.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-97

March 19, 2019

VIA ELECTRONIC MAIL

Mr. Andy Whaley

RE: FOIA Appeals 2019-97

Dear Mr. Whaley:

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 the grounds that the Office of Contracting and Procurement ("OCP") failed to respond to your March 5, 2019 request for records relating "DOEE Solicitation Number DOC354473."

This Office contacted OCP on March 5, 2019, and notified the agency of your appeal. OCP responded on March 8, 2019, advising us that OCP had conducted a search and identified 197 pages of responsive records. [1] OCP's response further indicated that these records were not sent to you due to an administrative error and upon receipt of the appeal OCP immediately released all responsive documents to you.

Because your appeal was based on OCP's failure to respond to your request, and the agency has now responded, we consider your appeal to be moot and it is hereby dismissed. You are free to assert any challenge, by separate appeal to this Office, to the substantive response OCP sent 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: D. Ryan Koslosky, Assistant General Counsel, OCP (via email)

[1] A copy of OCP'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: 2019-98

March 22, 2019

VIA ELECTRONIC MAIL

Ms. Julia Sabrick

RE: FOIA Appeals 2019-98

Dear Ms. Sabrick:

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 February 8, 2019, you submitted a request to the Department of Health ("DOH") for fourteen categories of records relating to the "Prescription Drug Monitoring Program."

On March 1, 2019, DOH denied your request. DOH indicated that the information is "exempt from disclosure under the District's FOIA Act pursuant to Section 6(a) of the Prescription Drug Monitoring Program Act of 2013, D.C. Official Code § 48-853.05(a)." DOH indicated any request for records covered by the Prescription Drug Monitoring Program Act of 2013 ("the Act") would have to be made in accordance with its implementing regulations. DOH's denial included a copy of the law.

On March 8, 2019, this Office received your appeal. Your appeal challenges DOH's denial by stating that your request is "made for the purposes of research and education . . . ." Your appeal notes that DOH is permitted to "release de-identified data for research or education purposes." Your appeal notes that you are not seeking individual patient data or records.

This Office contacted DOH on March 8, 2019, and notified the agency of your appeal. On March 11, 2019, DOH responded to the appeal.[1] DOH's response cites to D.C. Official Code § 2-534 (6) ("Exemption 6"), which allows for the withholding of records pursuant to another statute. DOH's response explains that D.C. Official Code § 48-853.05(a) explicitly makes the records you requested "exempt from disclosure based on requests made pursuant to" DC FOIA. DOH's response further explains that the only permissible disclosures of such information are to requests made pursuant to the regulations specific to the Prescription Drug Monitoring Program. DOH's response indicates that such a request must follow the process described at 17 DCMR § 10308.10.

Discussion

[1] A copy of DOH's response is attached.

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.

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).

The crux of this matter is the applicability of Exemption 6, pursuant to D.C. Official Code § 48-853.05(a).

Exemption 6

Exemption 6 allows for the withholding of "information specifically exempted from disclosure by statute" when the statute leaves no discretion on the issue. Here, the Act contains such statutory exemption: "any materials relating to the operation or safety of the Program shall be confidential and shall be exempt from disclosure based on requests made pursuant to" DC FOIA. D.C. Official Code § 48-853.05(a). We find that § 48-853.05(a) is a predicate statute which permits withholding records pursuant to Exemption 6.

Your appeal states that you seek this information for educational purposes, and are therefore permitted to access de-identified data pursuant to the Act. This may be true. However, as DOH's response indicates, the proper way to make such a request is not through DC FOIA but through a request under the Act. DOH's response indicates that such a request is different than one made under DC FOIA. DOH's response to this appeal explains what this process is and cites the relevant regulation, 17 DCMR § 10308.10.

We agree with DOH's determination that the records you seek may be withheld pursuant to Exemption 6. This Office adjudicates requests made pursuant to DC FOIA, and it is clear that the records requested may not be requested under DC FOIA. To the extent that you wish to receive such information, you must do so through the Act by following the process described in 17 DCMR § 10308.10.

Conclusion

As a result, we hereby affirm DOH'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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Edward Rich, Senior Assistant General Counsel, DOH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-99

March 22, 2019

VIA ELECTRONIC MAIL

Mr. Radcliffe Lewis

RE: FOIA Appeals 2019-99

Dear Mr. Lewis:

This letter responds to the administrative appeal you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA") pertaining to a request for records you submitted to the Metropolitan Police Department ("MPD").

On February 27, 2019, MPD received your request for (i) an incident report, (ii) and body-worn camera footage, related to a police interaction at a specified address and time. The request indicated that there was no arrest as a result of the interaction. In your appeal, you challenge MPD's apparent lack of response, stating that "I don't see the answer, or why denied the answer, the videos. Are not the police camera footage supposed to be available to the public?"

This Office notified MPD of your appeal, and the agency provided a response on March 15, 2019.[1] MPD's response indicates that it conducted a search of relevant electronic databases, and that no body-worn videos or incident reports were located.

Your appeal appears to challenge a lack of response from MPD. Since your appeal was based on MPD closing your request without providing a response, and the agency has now explained that it "does not have any responsive documents or videos," we consider your appeal to be moot and hereby dismiss it.

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 to this decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-100

March 27, 2019

VIA ELECTRONIC MAIL

Ms. Valerie Jablow

RE: FOIA Appeals 2019-100

Dear Ms. Jablow:

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 the grounds that the District of Columbia Public Schools ("DCPS") failed to timely produce records you requested.

On March 13, 2019, this Office docketed your appeal and asked DCPS to provide us with a response. Your appeal notes that you made two requests on January 24, 2019, and have not yet received the requested records.

On March 20, 2019, DCPS sent us a response to your appeal, on which you were copied. DCPS's response indicates that it is working on your requests. DCPS's response states that the searches it conducted to respond to your two requests have returned approximately 10,000 emails. DCPS is currently reviewing these records. We accept DCPS's representation that it has conducted a search and is reviewing the responsive records. Nonetheless, we conclude that DCPS's failure to produce responsive records constitutes a constructive denial under DC FOIA. *See* D.C. Official Code § 2-532(e).

As a result, we remand this matter to DCPS to complete its review and to provide you with all non-exempt records or portions thereof. Within 5 days of this decision, DCPS should produce the records it has already reviewed, and continue to produce records to you on a rolling basis. You are free to challenge DCPS's subsequent response by separate appeal to this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Eboni Govan, Attorney Advisor, DCPS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-101

March 27, 2019

VIA ELECTRONIC MAIL

Ms. Valerie Jablow

RE: FOIA Appeals 2019-101

Dear Ms. Jablow:

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 the grounds that the Office of the Deputy Mayor for Education ("DME") failed to respond to your request for records.

On January 24, 2019, you submitted a request to DME for communications between DME staff and persons affiliated with Howard University Middle School of Mathematics and Science.

On March 13, 2019, you submitted an appeal to this Office on the grounds that as of that date you had not received any records from DME in response to your request. On March 21, 2019, DME sent us a response to your appeal, on which you were copied. DME asserted that due to staffing changes, it had not yet responded to your request. DME's response indicated that it was training a new staff member who would conduct a search and respond to your request. DME's response states that it has not yet completed its search or production, and this Office accepts those representations. DME has constructively denied your request. *See* D.C. Official Code § 2-532(e).

As a result, we remand this matter to DME to complete the delinquent search that it is conducting, review responsive records, and provide to you all non-exempt records or portions thereof. This constitutes the final decision of this Office. You are free to challenge any subsequent, substantive response(s) you receive from DME by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Gina Toppin, Chief of Staff, DME (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-103

April 2, 2019

VIA ELECTRONIC MAIL

Mr. Nigel Atwell

RE: FOIA Appeals 2019-103

Dear Mr. Atwell:

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 State Superintendent of Education ("OSSE") failed to provide all of the records that you requested under DC FOIA.

Background

On January 23, 2019, you submitted a request under the DC FOIA to OSSE relating to a daycare facility. Your request sought:

> 1. The facility's application to OSSE for licensure, including all documents submitted to OSSE with the application form, including but not limited to all evidence and documents showing insurance obtained by the facility
> 2. All evidence of insurance provided by the facility to OSSE following issuance of a license to operate.
> 3. All documents supporting any complaints filed against the facility by a parent, including any complaints filed on an Unusual Incident Form. I understand that such documents may be required to be redacted under applicable law.
> 4. All documents concerning any investigation or resolution of any such complaint described in item 3.

OSSE granted portions of your request, but advised you that portions of your request would be provided at a later date because there was an ongoing investigation.

Subsequently, you appealed to this Office. Your appeal asserts that you have requested all complaints filed against the daycare, and is not limited to the one currently under investigation. Your appeal asks that OSSE provide all responsive records including the ones subject to a current investigation, noting that the identity of minors should be redacted.

OSSE responded to your appeal in a March 27, 2019 email to this Office.[1] OSSE's response explained that there are no additional complaints, besides the one that it has indicated to you that

[1] A copy of OSSE's response is attached to this decision.

it is investigating. [2] OSSE's response indicated that one of the records responsive to your request was being withheld pursuant to D.C. Official Code § 2-534(a)(6) ("Exemption 6") because a predicate statute, D.C. Code § 4-1303.06, limited OSSE's ability to release it. OSSE response further indicated that the remaining responsive records were being withheld pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3(a)(i)"), because their premature release would interfere with OSSE's ongoing enforcement proceeding related to the Child Development Facilities Regulation Act of 1998.

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), 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).

There are two primary issues in this matter, (i) the withholding made pursuant to Exemption 6 (2) and the withholdings made pursuant to Exemption 3(A)(i).

Exemption 6

OSSE's response states that it is withholding one record pursuant to Exemption 6, because a predicate statute prevents OSSE from releasing it.

Exemption 6 allows for the withholding of "information specifically exempted from disclosure by statute" when the statute leaves no discretion on the issue. Here, D.C. Code § 4-1303.06 limits the release of "[i]nformation acquired by staff of the Child and Family Services agency that identifies individual children reported as or found to be abused or neglected . . . .". As OSSE's response to the appeal notes, FOIA is not one of the enumerated purposes for which the information may be released.
We find that § 4-1303.06 is a predicate statute which permits withholding records pursuant to Exemption 6. Further, we accept OSSE's representation that the responsive record that it is

[2] We believe this clarification addresses your concern "[t]hat OSSE is currently investigating an unusual incident should not prevent OSSE from turning over documents related to all other parent complaints . . . ." We do not read your appeal as challenging the search OSSE conducted.

withholding pursuant to Exemption 6 is covered by § 4-1303.06. As a result, OSSE's withholding of the record is permissible.

Exemption 3(A)(i)

OSSE has stated on appeal that the remaining records that it is withholding are related to an ongoing enforcement proceeding related to OSSE's enforcement of the Child Development Facilities Regulation Act of 1998. Violations of this Act can result in criminal and civil sanctions. D.C. Official Code § 7-2046.

Records are considered "investigatory records" under Exemption 3 if they were compiled pursuant to an investigation focused 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 investigation that could result in civil or criminal sanctions, the remaining records meet Exemption 3's threshold requirement of being "investigatory records."

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978).

We accept OSSE's representation that the release of records gathered in the course of its investigation, prior to the conclusion of its enforcement proceeding, would interfere with that enforcement proceeding. As a result, we find OSSE's withholding of investigatory records pursuant to Exemption 3(A)(i) to be permissible.

Conclusion

Based on the foregoing, we affirm OSSE'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 the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Mona Patel, FOIA Officer, OSSE (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-104

April 2, 2019

VIA ELECTRONIC MAIL

Mr. Martin Austermuhle

RE: FOIA Appeals 2019-104

Dear Mr. Austermuhle:

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 Housing and Community Development ("DHCD") improperly withheld records you requested under the DC FOIA relating to a Request for Proposals ("RFP").

Background

On February 11, 2019, DHCD received your request for:

> A copy of the scoring criteria DHCD uses to judge development proposals submitted for HPTF funding; a copy of the scores given to all development proposals, successful and unsuccessful, that were submitted for the most recent round of HPTF funding, in June 2018; and copies of all of those development proposals, successful and unsuccessful, that were submitted to DHCD for that round of HPTF funding.

On March 8, 2019, DHCD granted your request in part and denied your request in part. DHCD withheld records that reflected scores pursuant to D.C. Official Code § 2-534(a)(4) ("Exemption 4"), specifically invoking the deliberative process privilege.

You appealed DHCD's response to this Office. First, your appeal acknowledged that the deliberative process exists to encourage frank and open discussions between subordinates and superiors. Your appeal states that you are "simply seeking the scores, one of the final steps in the deliberative process to determine how well specific development proposals match up to DHCD's own guidelines for funding." Your appeal asserts that "[i]t's farcical to argue that disclosing the final scores would stifle any open, frank discussions . . . ." However, you acknowledge that "the scores are submitted to the DHCD director and do not bind [her] to picking a certain project over another. In a sense, [she] take[s] the scores and deliberate[s] further on whether specific proposals are funded or not." Nonetheless, you argue that there is a significant public interest in the disclosure of the scores because they touch on the allocation of $100 million of resources.

This Office contacted DHCD on March 18, 2019, and notified the agency of your appeal. On March 26, 2019, DHCD provided this Office with a response to your appeal, including a copy of a sample withheld scorecard for our *in camera* review.[1] With regard to the withheld scorecards, DHCD reasserted its position that Exemption 4 protects them from disclosure. DHCD argued that the scorecards are pre-decisional and were created to aid the government in making a decision.

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.

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).

Exemption 4

In order to adjudicate your appeal, DHCD provided us with a sample of one of the withheld documents at issue for our *in camera* review. The document is a scorecard made to evaluate responses to an RFP.

Exemption 4 vests public bodies with discretion to withhold "inter-agency or intra-agency memorandums 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). As a result, Exemption 4 encompasses the deliberative process privilege. *See McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011). 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.*

[1] A copy of DHCD's response is attached.

The records at issue meet the threshold requirement of being "inter-agency or intra-agency" documents, as they are internal DHCD records.

In your appeal, you acknowledge that the records are pre-decisional, in that "they do not bind" the Director in her decision making, and that she may "take the scores and deliberate further on whether specific proposals are funded or not." While the scorecards are, as you put it, "one of the final steps," they are not the final step, in that they do not represent a final decision by the agency. Having reviewed the scorecard and DHCD's representations, we agree that the scorecards are predecisional.

Similarly, we find that the scorecards are deliberative. The scorecards do not reflect the final decision maker's ultimate view; the scores amount to recommendations, in the form of numbers, made by subordinates to a superior. *Wolfe v. HHS*, 839 F.2d 768, 776 (D.C. Cir. 1988) (en banc) (when "subordinates are reporting to superiors, disclosure could chill discussion at a time when agency opinions are fluid and tentative."); *SMS Data Prods. Group Inc. v. U.S. Dep't of the Air Force*, No. 88-481, 1989 WL 201031, at *1-2 (D.D.C. Mar. 31, 1989) (holding technical scores and technical rankings of competing contract bidders predecisional and deliberative.). [2]

We also find that that the privileged material is "inextricably intertwined," such that segregated release, pursuant to D.C. Official Code § 2-535(b), is not possible. *See Coastal States Gas Corp*, 617 F.2d at 866 (D.C. Cir. 1980). After reviewing the scorecards, we find that redaction of privileged portions would leave a record devoid of informational value. As a result, DHCD was permitted to withhold the scorecards in their entirety pursuant to the deliberative process privilege.

Conclusion

Based on the foregoing, DHCD's response to your request is affirmed, and we 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Tonya Condell, Assistant General Counsel, DHCD (via email)

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[2] *See also, Warren v. SSA,* No. 98-CV0116E, 2000 WL 1209383, at *2 (W.D.N.Y. Aug. 22, 2000) (protecting applicant scoresheets on basis that "[t]he decisions of a hiring panel to emphasize certain types of skills or how many points to award to an applicant for a particular educational experience or previous employment experience are deliberative decisions in that they set the policy for the hiring process.").

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-105

April 2, 2019

VIA ELECTRONIC MAIL

Ms. Amy Phillips

RE: FOIA Appeals 2019-105

Dear Ms. Phillips:

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 a disciplinary hearing of a police officer.

Background

On March 15, 2019, you submitted a FOIA request to the MPD for records related to an Adverse Action Hearing of a named officer that occurred on March 7, 8, and 12, 2019.

MPD denied your request, stating that disclosure of the record would constitute a clearly 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 MPD's response. Your appeal cites to D.C. Code § 2-536(a)(7), as requiring to be made public "the minutes of all proceeding of all public bodies." Your appeal notes that the hearing was conducted in public, and you attended the hearing. Your appeal argues that there cannot be a privacy interest in the records that you requested, because the exhibits and content of the transcripts have already been released to the public. Further, you note that some of the materials that you requested have already been published or described in detail in the news media. Your appeal asserts that the subject matter of the records is of "serious public importance," which should weigh towards their release.

MPD sent this Office a response to your appeal on March 26, 2019,[1] reaffirming its earlier position that under Exemptions 2 and 3(C) the records are exempt in their entirety because disclosure would constitute a clearly unwarranted invasion of privacy. MPD asserts that the release at the hearing does not eliminate the privacy interest at stake, because the release was "practically obscure," and not otherwise available outside of the hearing. Lastly, MPD argues that the public interest applicable under DC FOIA is not present to balance against the privacy

[1] A copy of the MPD's response is attached.

interests of the individual involved in the record sought, because the conduct of a low ranking individual does not inform the public of the agency as a whole.

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).

The primary issues in this appeal are (i) whether certain records must be made public as matter of course, (ii) whether information that has been shared in a public hearing may retain a privacy interest, (iii) whether the records may be withheld pursuant to Exemption 2 or 3(C).

Information Which Must Be Made Public

Under District law, certain categories of information "must be made public." D.C. Official Code § 2-536. As your appeal notes, one of these categories is the minutes of the proceedings of a public body. D.C. Code § 2-536(a)(7). However, this section of the code is made "[w]ithout limiting the meaning of other sections of this subchapter . . ." D.C. Official Code § 2-536(a). We read this to mean that "Information which must be made public" does not limit the ability of an agency to exempt records from disclosure pursuant to D.C. Official Code § 2-534.

However, we do not find that any exemption permits withholding the minutes that you requested. Therefore, we conclude that the requested minutes should be disclosed pursuant to DC FOIA.

Information Already Made Public

Without citation, your appeal states that "no invasion of personal privacy can be asserted where the records requested consist solely of information that has already been made public." Your appeal notes that "I have personally heard the testimony and arguments." While the fact that the information has been disclosed to the public in some capacity is important to the analysis that follows; the fact that you personally have heard the testimony does not determine the outcome. The identity of the requester "has no bearing on the merits of his or her FOIA request." *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 771 (1989).

Under the applicable case law, the public nature of an adverse action does not necessitate the subsequent release of related documents. *Id.* at 762; *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."); *Edmonds v. FBI*, 272 F. Supp. 2d 35, 53 (D.D.C. 2003) (finding that media identification of persons mentioned in a law enforcement file "does not lessen their privacy interests or 'defeat the exemption,' for prior disclosure of personal information does not eliminate an individual's privacy interest in avoiding subsequent disclosure by the government"). This doctrine is referred to as "practical obscurity" and states that a cognizable privacy interest may be found in records that were once released but are now not made available to the public or are now difficult to obtain. The Adverse Action Hearing that is the subject of your records request happened only a few weeks ago, shortly before you made your request. It was open to the public. As a result, not all of the records concerning the Adverse Action Hearing appear to be practically obscure. We find that there is a diminished privacy interest in these records; however, relevant considerations may counsel in favor of withholding certain portions of the records in order to preserve legitimate privacy interests which remain.

Exemptions 2 and 3(C)

Part 3 of your Request

First, we will note that Part 3[2] of your records request facially does not appear to be a request which would justify withholding records in their entirety under either Exemption 2 or 3(C). The category of records sought in this portion of the request appears to consist simply of inquiries concerning whether the hearing is going to be open to the public. MPD shall conduct a search for such records, and release the non-exempt portions.

Remaining Records

The remaining records at issue here are related to an "Adverse Action Hearing" of a named officer. MPD has asserted privacy interests under both Exemptions 2 and 3(C), which have different standards for withholding.[3] The distinction between the two privacy exemptions rests on whether the record sought was compiled for a law enforcement investigation. Records are

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[2] "Any and all letters, emails, text messages, voicemail messages or other written or recorded communications to or from any person to any member of MPD, and specifically members of MPD's Disciplinary Review Division related to requests by members of the public to observe this Adverse Action Hearing."

[3] 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 . . . 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).

considered "investigatory records" under Exemption 3(C) if they were compiled pursuant to an investigation focused 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 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, illegal acts of particular identified [persons], acts which could, if proved, result in civil or criminal sanctions.'").

However, courts have consistently distinguished between (i) internal disciplinary investigations where the agency is acting as an employer, and (ii) internal investigations in which the agency is acting as an enforcer of law.[4] To wit:

> There can be no question that an investigation conducted by a federal agency for the purpose of determining whether to discipline employees for activity which does not constitute a violation of law is not for "law enforcement purposes" under Exemption 7. This is assumed in the *Rural Housing Alliance* test, which requires that the acts investigated must be ones "which could, if proved, result in civil or criminal sanctions." *Rural Housing Alliance*, 498 F.2d at 80. Furthermore, this is assumed in all of the FOIA cases respecting requests for the disciplinary records of federal employees which are analyzed under Exemption 6[5] (which protects certain personnel files), rather than Exemption 7[6].

Stern v. FBI, 737 F.2d 84, 90 (D.C. Cir. 1984)

We find that records created for the Adverse Action Hearing do not meet the threshold requirement of being compiled for "law enforcement purposes," because "an agency's general internal monitoring of its own employees to insure [sic] compliance with the agency's statutory mandate and regulations is not protected from public scrutiny under" Exemption 3, *Stern*, 737 F.2d at 89.[7] We find that the nature of the Adverse Action Hearing is an employment

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[4] *See also, Rural Hous. All.*, 498 F.2d at 81 ("For the purpose of analyzing the application of exemption 7 in the instant and similar cases, it is therefore necessary to distinguish two types of files relating to government employees: (1) government surveillance or oversight of the performance of duties of its employees; (2) investigations which focus directly on specifically alleged illegal acts, illegal acts of particular identified officials, acts which could, if proved, result in civil or criminal sanctions.")

[5] Federal Exemption 6 is the equivalent of DC's Exemption 2.

[6] Federal Exemption 7 is the equivalent of DC's Exemption 3.

[7] *Wood v. FBI*, 312 F. Supp. 2d 328, 345 (D. Conn. 2004) (reiterating that "'investigation conducted by a federal agency for the purpose of determining whether to discipline employees for activity which does not constitute a violation of law is not for law enforcement purposes under Exemption 7'" (quoting *Stern*, 737 F.2d at 90)), *aff'd in part & rev'd in part on other grounds*, 432 F.3d 78 (2d Cir. 2005); *Varville v. Rubin*, No. 3:96CV00629, 1998 WL 681438, at *14 (D. Conn. Aug. 18, 1998) (finding threshold not met by report discussing possible ethical

determination that is different in kind from the sort of civil enforcement embraced by Exemption 3.[8] As a result, records created for the Adverse Action Hearing should be analyzed under Exemption 2 and not Exemption 3(C).

We note that records which were created as part of a criminal investigation of the underlying conduct that precipitated the Adverse Action Hearing are embraced by Exemption 3. *Gray v. United States Army Criminal Investigation Command*, 742 F. Supp. 2d 68, 73 (D.D.C. 2010) ("Plaintiff concedes that she 'does not dispute that the record(s) in question, to the degree they have thus far been identified, were initially created for a law enforcement purpose and therefore are potentially subject to Exemption 7 protection.'"). In *Gray*, records which were compiled for a criminal investigation but then later used in a disciplinary hearing were allowed to be withheld. As a result, to the extent that MPD used records compiled as part of a criminal investigation at the Adverse Action Hearing, those records may be analyzed under Exemption 3(C).

Exemption 3(C)

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)[9]. "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 there is a sufficient privacy interest associated with a police officer who is being investigated for wrongdoing. "[A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations." *Stern*, 737 F.2d at 91. A privacy implication is implicated in documents that allege wrongdoing even if the accused individual

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violations and prohibited personnel practices because inquiry "more closely resembles an employer supervising its employees than an investigation for law enforcement purposes").

[8] *See Schoenman v. FBI*, 573 F. Supp. 2d 119, 147 (D.D.C. 2008) (finding State Department records relating to investigation of passport enforcement to be compiled for law enforcement purposes); *Envtl. Prot. Servs. v. United States EPA*, 364 F. Supp. 2d 575, 588 (N.D.W. Va. 2005) (finding withholding justified because of ongoing EPA administrative action in enforcing the Toxic Substances Control Act).

[9] Exemption 7(C) under the federal FOIA is the equivalent of Exemption 3(C) under the DC FOIA.

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. However, as noted above, we find that the public nature of the Adverse Action Hearing diminishes the privacy interest.

With regard to the second part of the privacy analysis under Exemption 3(C), we examine whether the public interest in disclosure is outweighed by the individual privacy interest at issue. On appeal, you argue that "a public administrative hearing about the conduct of police personnel, [is] a matter of serious public importance."

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.

Id. at 1492-93.

We recognize that there is a public interest in the records that you have requested. *See Cochran v. U.S.*, 770 F.2d 949, 956 (11th Cir. 1985) ("[T]he balance struck under FOIA exemption [two] overwhelmingly favors the disclosure of information relating to a violation of the public trust by a government official . . . ."). Further, we note that courts have distinguished between law enforcement officers who have acted negligently from those who have acted intentionally, in evaluating the public interest in the review of their conduct. *Stern*, 737 F.2d at 92-93 ("We must distinguish between the general import of an event and the roles specific individuals play in that event. While we agree with the district court that the public has a strong interest in the airing of the FBI's unlawful and improper activities, we find that the public interest in knowing the identities of employees who became entwined inadvertently in such activities is not as great.").

In consideration of the diminished privacy interest of the records being shown in a public hearing, and the great public interest in favor of disclosing willful violations of the public trust by a government official, we find that the public interest outweighs the privacy interest of the officer named in your request.[10] Records relating solely to him should be released.

Conversely, we find that the public interest does not outweigh the privacy interest of the other individuals, such as witnesses, victims, or bystanders – the names and identifying information of these persons may be redacted pursuant to Exemption 3(C).

Exemption 2

Having found that MPD may not withhold certain records pursuant to the more relaxed standard of Exemption 3(C), we need not analyze them under Exemption 2.

Segregability

The last issue to be considered is whether MPD can redact the withheld 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).

We will note that records created for the Adverse Action Hearing that were not a part of an underlying criminal investigation are likely subject to reasonably segregated release, and that MPD may redact personally identifying information pursuant to Exemption 2.

Conclusion

Based on the forgoing, we affirm MPD's decision in part, and remand in part, for MPD to conduct a search and release non-exempt portions of responsive records in accordance with the guidance in this decision.

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[10] *See also*, *Schmidt v. U.S. Dep't of the Air Force*, No. 06-3069, 2007 WL 2812148, at *11 (C.D. Ill. Sept. 20, 2007) (finding that plaintiff has a valid privacy interest regarding information about his discipline; however, disclosure of records regarding disciplinary actions against plaintiff is proper because "[i]t is undisputed that the friendly-fire incident garnered significant public and media attention" and "[t]he release of Schmidt's reprimand gave the public, in the United States and around the world, insight into the way in which the United States government was holding its pilot accountable").

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: 2019-106

April 3, 2019

VIA ELECTRONIC MAIL

Mr. Scott Campbell

RE: FOIA Appeals 2019-106

Dear Mr. Campbell:

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"), challenging the Office of the Chief Financial Officer's ("OCFO") response to your request for Uniform Commercial Code ("UCC") records.

Your appeal was docketed by this Office on March 19, 2019. Your request and appeal make various citations to the UCC and express dissatisfaction with records the OCFO has posted online. This Office interprets the substance of your request as a request to disclose public records in a form or format desirable to you. Pursuant to DC FOIA, public bodies are obligated to "provide [requested records] in any form or format requested by [a person seeking public records], provided that the person shall pay the costs of reproducing the record in that form or format." D.C. Official Code § 2-532(a-1).

In responding to this appeal, OCFO has indicated to this Office that it has been in communication with you, relating to the format in which you would like the records to be produced. OCFO has further indicated that it is preparing for you a good faith fee estimate for the "costs of reproducing the record[s] in that form or format."

Based on the foregoing, we consider your appeal to be moot and hereby dismiss it. You are free to challenge OCFO's subsequent response by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Bazil Facchina, 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: 2019-107

April 4, 2019

VIA ELECTRONIC MAIL

Ms. Brenda Sayles

RE: FOIA Appeals 2019-107

Dear Ms. Sayles:

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"), challenging the response provided by the Department of Consumer and Regulatory Affairs ("DCRA") to your request.

On April 14, 2014, you submitted a DC FOIA request for "the legal location" of 11 statutes. DCRA responded to your request on May 28, 2014. On March 19, 2019, you appealed DCRA's response to your request. Your appeal states that you want "assistance in obtaining definitions of the undefined words ***'preference'*** and ***'grandfather/grandfathering in***[.]***'*** "

This Office did not notify DCRA of your appeal, because there is sufficient information in your filing for us to render a decision on the matter.

The primary issue raised by your appeal is whether DCRA is obligated to perform legal research for you. 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. . ."); *Frank v. DOJ*, 941 F. Supp. 4, 5 (D.D.C. 1996) (an agency is not required to "dig out all the information that might exist, in whatever form or place it might be found, and to create a document that answers plaintiff's questions"). DCRA is not obligated to perform legal research for you.

Based on the foregoing, we affirm DCRA'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 the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Esther McGraw, 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: 2019-108

April 4, 2019

VIA ELECTRONIC MAIL

Ms. Valerie Jablow

RE: FOIA Appeals 2019-108

Dear Ms. Jablow:

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"), challenging the response you received from the District of Columbia Public Schools ("DCPS") to your request for applications and proposals DCPS received for public education data during a specific time period.

Your request was originally made on August 24, 2018. You submitted an appeal on October 19, 2018, which was docketed as FOIA Appeal 2019-13. On October 31, 2018, this Office remanded FOIA Appeal 2019-13 to DCPS to provide records on a rolling basis. In that decision we indicated that you had the right to challenge DCPS's subsequent production. Pursuant to 2019-13, DCPS created and provided to you a spreadsheet related to the information you requested. For this production you paid $198. You submitted a subsequent appeal on November 2, 2018, challenging DCPS's production, which was docketed as FOIA Appeal 2019-24. This Office remanded FOIA Appeal 2019-24 on November 19, 2018, for DCPS to continue providing records on a rolling basis.

On March 21, 2019, you filed this appeal. In your appeal, you indicated that as of that date you had not yet received any responsive records. Your appeal indicated that you had received several representations from DCPS over the months that records were forthcoming. This Office notified DCPS of your appeal and requested it explain the production made so far, pursuant to the FOIA Appeal 2019-24 decision's directive to disclose. On March 26, 2019, DCPS responded to this appeal and indicated that it had made its first production on that day, disclosing to you one of "approximately 44 proposals." DCPS's response did not provide an estimate of when its production would be complete or when you might expect the next installment of the rolling production.

DCPS is well outside of the statutory deadline to respond to your request. *See* D.C. Official Code § 2-532. Further, there is nothing in the record that supports the argument that the four-month delay in producing a single responsive record demonstrates a good faith effort to produce responsive records on a rolling basis.

We remand this matter to DCPS with the directive that it must promptly provide you with responsive records in accordance with DC FOIA and its implementing regulations.

This constitutes the final decision of this Office. You are free to challenge DCPS's subsequent, substantive response by 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 the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Eboni Govan, Attorney Advisor, DCPS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-109 & 2019-110

April 4, 2019

VIA ELECTRONIC MAIL

Mr. Mathew Reeder

RE: FOIA Appeals 2019-109 & 2019-110

Dear Mr. Reeder:

This letter responds to the administrative appeals 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 Metropolitan Police Department ("MPD") has not provided records in response to your January 2, 2019, requests for records relating to a December 20, 2018, vehicle accident.

On February 21, 2019, this Office received your prior appeals in this matter, which were docketed as FOIA Appeals 2019-86 and 2019-87. In response to those appeals, MPD represented to this Office that (i) one of your requests had been mis-routed and MPD was working on producing the requested records, (ii) your request for body-worn camera footage was being processed by MPD's vendor; and (iii) that both categories of records would be produced to you within five days.

On March 21, 2019, you filed the instant appeals, indicating that you had not yet received responsive records. We asked MPD to provide an explanation to this Office of its failure to produce the requested records, but as of the date of this decision, we have not received a response. Based on the record before us, we can only conclude that MPD's failure to timely respond to your requests constitutes a constructive denial under DC FOIA. D.C. Official Code § 2-532(e). MPD should promptly disclose to you any non-exempt, responsive records.

This constitutes the final decision of this Office. You may challenge MPD's subsequent, substantive response by separate appeal to this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia in the Superior Court of the District of Columbia in accordance with 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: 2019-111

April 9, 2019

VIA ELECTRONIC MAIL

Mr. Fritz Mulhauser

RE: FOIA Appeals 2019-111

Dear Mr. Mulhauser:

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") did not respond to your request for records related to its body-worn camera ("BWC") program.

On February 14, 2019, you submitted a request to MPD which asked for six categories of records related to MPD's use of vendors in administering its BWC program. On March 25, 2019, you filed the instant appeal, asserting that MPD's failure to respond constituted a constructive denial of your request. This Office contacted MPD, to notify the agency of your appeal. On April 2, 2019, MPD sent this Office its response to your appeal.[1] In its response, MPD asserts that it has "initiated an additional search for responsive documents." MPD represents that it "anticipates that the searches will be completed within the next week."

We accept MPD's representation that it is conducting a search. Nonetheless, we conclude based on the record before us that MPD's failure to timely produce records constitutes a constructive denial under DC FOIA. D.C. Official Code § 2-532(e). We therefore remand this matter to MPD to complete its search promptly and disclose to you any non-exempt, responsive records. You may challenge MPD's subsequent response by 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 the DC FOIA.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

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[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: 2019-112

April 9, 2019

VIA ELECTRONIC MAIL

Mr. Michael Miller

RE: FOIA Appeals 2019-112

Dear Mr. Miller:

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 Metropolitan Police Department ("MPD") to your request for records relating to a series of incident reports.

Background

On March 26, 2019, you submitted a FOIA request to MPD for the names and ages of individuals associated with a list of incident reports. On the same day, MPD denied your request, neither confirming nor denying the existence of responsive records,[1] on the grounds that disclosure or even acknowledgement of the requested records would constitute a clearly 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").

This Office received your appeal on March 26, 2019. On appeal you challenge MPD's denial, arguing that MPD has already publicly disclosed the names and ages of the individuals related to your request "on the department's listservs." Your appeal argues that release of the records that you requested would allow for "intelligent analysis in the service of the citizens of the District of Columbia." You argue without citation that it is "clearly in the public's interest to know whether individuals arrested in connection to suspected hate crimes have, in fact, been charged with a crime and/or convicted." Further, you argue that disclosure could "enable the public to determine when those arrested have been cleared of wrongdoing." Lastly, you state that MPD has released similar information to another reporter at a different outlet.

MPD sent this Office a response to your appeal on April 8, 2019.[2] MPD reaffirms its earlier position that under Exemptions 2 and 3, any responsive records would be exempt because the release of any potentially responsive records "would constitute a clearly unwarranted invasion of

[1] This type of response is referred to as a "Glomar" response.
[2] A copy of the MPD's response is attached.

privacy." MPD does not appear to reassert its Glomar response on appeal.[3] MPD's response indicates that its FOIA staff is not familiar with the release of similar records to another news outlet, as referenced in your appeal.

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.

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).

Exemption 2

Exemption 2 prevents disclosure of "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Under Exemption 2, 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*. The instant matter concerns a request for names and ages relating to incident reports concerning persons who are not you. The courts have found "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *Reporters Comm. For Freedom of Press*, 489 U.S. at 780. Here, we find that disclosing names and ages related to incident reports that identify individuals who are not yourself, and from whom you have not provided written authorization, would constitute an unwarranted invasion of those individuals' personal privacy.

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. Your appeal argues that release of the records that you requested would allow for

[3] We agree that a Glomar response is inappropriate for the instant request because acknowledging the existence of the requested records would not amount to a substantive admission of information that would violate a privacy interest.

"intelligent analysis in the service of the citizens of the District of Columbia." You argue without citation that it is "clearly in the public's interest to know whether individuals arrested in connection to suspected hate crimes have, in fact, been charged with a crime and/or convicted." Further, you argue that disclosure could "enable the public to determine when those arrested have been cleared of wrongdoing."

In the context of DC FOIA, a record is deemed to be of "public interest" if it would shed light on an agency's conduct. *Beck v. Department of Justice, et al*., 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

> 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.

Id. at 1492-93.

We find that the release to a third party of these police records would be an unwarranted invasion of privacy and would not "contribute *significantly* to public understanding of the operations or activities of the government. *See Berger v. I.R.S.*, 487 F. Supp. 2d 482, 505; *see also Hines v. D.C. Bd. of Parole*, 567 A.2d 909, 912 (D.C. 1989) (noting that "courts are generally reluctant 'to give third parties access to the presentence investigation report prepared for some other individual or individuals'"). While the public may be interested in such information, it is unclear how naming individuals associated with incident reports would further the understanding of the public of MPD's performance of its statutory duties. As a result of the existence of a privacy interest and the lack of a relevant public interest in the records at issue, MPD properly withheld the records, pursuant to Exemption 2 of the DC FOIA. Further, responsive records could not be reasonably segregated, pursuant to D.C. Official Code § 2-534(b), due to the nature of the request being specifically for personally identifying information.

Conclusion

Based on the forgoing, 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 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: 2019-113

April 30, 2019

VIA ELECTRONIC MAIL

Mr. Julio Mercedes

RE: FOIA Appeals 2019-113

Dear Mr. Mercedes:

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 the grounds that the Metropolitan Police Department ("MPD") did not respond to your request for records relating to a car accident.

Your appeal was received by this Office on April 15, 2019. This Office notified MPD and requested that it respond to your appeal. On April 29, 2019, MPD indicated to this Office that that day it granted your request and made the records available to you.

Since your appeal was based on MPD's failure to respond, and the agency has now responded by granting access to the records that you requested, we consider your appeal to be moot and hereby dismiss it. You are free to challenge MPD's release by 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.

Sincerely,

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: 2019-114 & 2019-115

April 11, 2019

VIA ELECTRONIC MAIL

Ms. Tiffany Montgomery

RE: FOIA Appeals 2019-114 & 2019-115

Dear Ms. Montgomery:

This letter responds to the administrative appeals you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeals, you challenge the responses you received from the Department of Health ("DOH") to your requests under the DC FOIA.

Background

You submitted two FOIA requests to DOH for employment records relating to two named veterinarians, including authorizations for outside employment, resumes, job applications, and financial disclosures.

Consistent with FOIA Appeal 2019-31, a prior appeal brought by you, DOH provided you with resumes relating to these veterinarians.[1] DOH's responses indicated that it did not have some of the records which you requested, specifically an application for employment of one veterinarian, or any records relating to a request for outside employment for the other. DOH partially denied the remainder of your request, stating that any responsive records that existed would be personnel records, which are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2").[2]

On March 28, 2019, this Office received your appeals and notified DOH. Your appeals explain your concerns relating to DOH's monitoring of veterinarians and why you believe releasing records responsive to your request would serve the public interest. Your appeals argue that the public has a right to inspect the employment records of DOH employees.

[1] In response to one of your instant appeals, DOH noted that it had inadvertently failed to attach a resume. DOH has since provided you with it. We consider this part of your appeal to be moot.
[2] Exemption 2 prevents disclosure of "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

DOH responded to your appeals on April 4, 2019.[3] In its responses, DOH asserts that it does not have some of the records requested by you, and that other records may be properly withheld pursuant to Exemption 2.[4]

We accept DOH's representations that it does not possess the records which it has indicated to you that it does not possess. Now that DOH had provided to you the resume that it inadvertently failed to disclose, and consistent with our reasoning in FOIA Appeal 2019-31, we find that there is a cognizable privacy interest in the remaining employment records that you have requested. Moreover, we do not believe that the public interest in disclosure of the remaining responsive records outweighs the privacy interests of the individuals. We find that releasing financial disclosures[5] and requests for outside employment of two individuals would reveal little of the agency's conduct in performing its statutory duties, which is the relevant public interest under DC FOIA. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773 (1989).

Conclusion

Based on the foregoing, we affirm DOH'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 the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Phillip Husband, FOIA Officer, DOH (via email)

[3] DOH's responses are attached to this decision.

[4] One of DOH's responses relies on a citation to D.C. Official Code § 1-631.01 and 6-B DCMR 3100. As stated in FOIA Appeal 2019-31, these are not a proper basis for withholding. We read DOH's response to rely on Exemption 2.

[5] We note that the secrecy of financial disclosure forms is governed by laws outside of DC FOIA. D.C. Official Code § 1-1162.24 sets out those disclosure forms of public officials which may be made public by the Board of Ethics and Government Accountability. Whereas, D.C. Official Code § 1-1162.25 governs "Confidential disclosure[s] of financial interest," of employees which "shall remain confidential."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-118

April 18, 2019

VIA ELECTRONIC MAIL

Mr. Logan Koepke

RE: FOIA Appeals 2019-118

Dear Ms. Koepke:

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 Forensic Sciences ("DFS") improperly withheld records you requested pertaining to what you term "mobile devise forensic technology" or "MDFTs."

Background

On February 13, 2019, you submitted a DC FOIA request to DFS for several categories of records related to MDFTs.

DFS granted your request in part and denied your request in part. DFS's response indicated that it did not possess some of the records that you requested. Additionally, DFS's response indicated that it withheld some records in their entirety and redacted portions of some records, pursuant to D.C. Official Code § 2-534(a)(1) ("Exemption 1") and D.C. Official Code § 2-534(a)(3)(E) ("Exemption 3(E)").

On appeal, you challenge DFS's response. Your appeal argues that it is generally known that law enforcement uses MDFTs to analyze mobile phones, and that it is also known that law enforcement uses such tools offered by two specified companies. Your appeal concludes that because this is known, Exemption 3(E) is not applicable. Further, your appeal argues that it would "be easy to produce or generate," the aggregate statistical report described in your request. Additionally, your appeal reiterates that you are not seeking case files for open investigations, but instead are seeking closed investigations that involve MDFTs. Your appeal argues that Exemption 1 is inappropriate and that DFS should produce a segregated portion of agreements withheld pursuant to this exemption, acknowledging that line-item pricing is protected. Lastly, you argue that Exemption 1 cannot be used to withhold a non-disclosure agreement, because an agency cannot bargain away its statutory duty to disclose records.

DFS sent this Office a response to your appeal on April 8, 2019, reaffirming its earlier position under Exemptions 1 and 3(E). DFS reasserts that it does not maintain some of the records that

you request. Further, DFS citing to specific case law argues that the name of a law enforcement agency's vendor in similar circumstances has been found exempt, under federal FOIA.

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 statute 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).

The primary issues in this appeal are (i) whether DFS must create a record, (ii) whether records may be withheld pursuant to Exemption 3, (iii) whether records may be withheld pursuant to Exemption 1; (iv) whether segregated release is required.

Creating a Record

Portions of your request seek "records reflecting aggregate use of MDFTs." Your appeal notes that "[t]here is strong reason to believe that the kind of aggregate statistical report [you] seek should be easy to produce or generate." Under DC FOIA, agencies do not have a duty to create records. *See Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985) ("FOIA creates only a right of access to records, not a right to personal services."). However, where a database exists, a query of that database has been construed as not creating a record:

> Because [agency] has conceded that it possesses in its databases the discrete pieces of information which [requester] seeks, extracting and compiling that data does not amount to the creation of a new record. Rather, [requester] has requested [agency] to conduct an electronic search of its databases. The programming necessary to conduct the search is a search tool and not the creation of a new record.

Schladetsch v. United States HUD, 2000 U.S. Dist. LEXIS 22895 (D.D.C. April 4, 2000).

Here, DFS has represented that it does not maintain a database that contains the aggregate data that you seek. We accept this representation. DFS is not obligated to create the aggregate report contemplated by your request.

Exemption 3

DFS withheld or redacted portions of records responsive to the three parts of your request at issue on appeal. DFS has asserted that these withholdings and partial withholdings were justified, pursuant to Exemption 3(E). Exemption 3(E) of the DC FOIA exempts, "Investigatory records compiled for law-enforcement purposes . . . but only to the extent that the production of such records would: . . . Disclose investigative techniques and procedures not generally known outside the government." D.C. Official Code § 2-534(a)(3)(E).

For the reasons discussed below, we do not find that all of DFS's withholdings made pursuant to Exemption 3(E) are permissible.

Threshold Requirement

Before we reach the specific question of whether the records at issue would "disclose investigative techniques," we must first determine whether the records meet the threshold requirements of DC FOIA's Exemption 3.

The federal Freedom of Information Act has been amended[1] since the DC FOIA was modeled after it, and contains a law enforcement exemption that protects "records or information compiled for law enforcement purposes." DC FOIA's law enforcement exemption is narrower. DC FOIA does not cover all "records or information" compiled for "law enforcement purposes," but is instead limited to "investigatory records." *See also 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, illegal acts of particular identified [persons], acts which could, if proved, result in civil or criminal sanctions.'").

Records that are not investigatory are not embraced by the exemption, even when those records were (i) "compiled for law enforcement purposes," and (ii) their disclosure would cause one of the harms contemplated by Exemption 3's subsections. Neither this Office nor the courts possess "the authority to create additional exemptions from disclosure. The statutory exemptions are intended to be exclusive, D.C. Code § 1-1524 (c) (1981), and equity cannot enlarge or extend them beyond the limits set by the act." *Barry v. Wash. Post Co.*, 529 A.2d 319, 321 (D.C. 1987).

The DC Court of Appeals made this distinction in *Barry*, for a request made before the enactment of the federal amendment. In *Barry*, the court rejected the then Executive Office of the Mayor's attempts to withhold law enforcement records related to the security of the Mayor pursuant to Exemption 3.

> The security documents at issue here do not fall within this definition. They were not compiled in the course of any particular law enforcement investigation, but

[1] The federal FOIA's law enforcement exemption was amended, effective October 27, 1986. *See* Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, tit. I, Subtitle N, 100 Stat. 3207 (1986) (codified at 5 U.S.C. § 552(b)(7)).

> merely reflect day-to-day expenditures for security relating to the Mayor. The Post did not request, and the trial court did not grant access to, any documents other than financial records. Appellants do not assert that these records were compiled in the course of an investigation for any specific law enforcement purpose. We conclude that they are not exempt from disclosure under exemption 3.

Barry, 529 A.2d at 322 (D.C. 1987).

Similarly, we find that some of the records withheld by DFS appear to be similar to "day-to-day expenditures," and would not meet the threshold requirement of being "investigatory records." *Id.* Specifically, records may not be withheld pursuant to Exemption 3 which relate to DFS's acquisition of services by a vendor and which were not created "in the course of an investigation for any specific law enforcement purposes." *Id.*

Conversely, the individual investigatory reports of closed cases were created as part of criminal investigations for law enforcement purposes. These withheld records do meet the threshold requirement of Exemption 3.

Exemption 3(E)

In this matter DFS has withheld records pursuant to Exemption 3(E). Exemption 3(E) allows for the withholding of investigatory records when the records would "disclose investigative techniques and procedures not generally known outside the government." Even when a surveillance technique is commonly known, courts have endorsed the withholding of details that could allow criminals to circumvent the surveillance.[2] DFS asserts that while the existence of a technology may be generally known, that general knowledge does not amount to an official disclosure which would compel further release of information. DFS argues that technological countermeasures and efforts to circumvent law enforcement efforts would be aided by the release of any details related to the withheld records. Due to the technical nature of the MDFTs, we defer to the DFS's assertion that knowing technological capabilities of MDFTs could result in increased circumvention. Here, disclosure of product names, costs, and serial numbers could be cross referenced with other available information, to reveal the technological capabilities of DFS's equipment because product names, costs, and serial numbers are linked to the technological capabilities of these devices. We find that any redactions or withholdings of investigatory records of such information made by DFS under Exception 3(E) are permissible.

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[2] *See, e.g., Soghoian v. DOJ*, 885 F. Supp. 2d 62, 75 (D.D.C. 2012) (protecting electronic surveillance techniques because release of information showing what information is collected during surveillance, how it is collected, and when it is not collected could allow criminals to evade detection); *Lewis-Bey v. DOJ*, 595 F. Supp. 2d 120, 138 (D.D.C. 2009) (protecting details of electronic surveillance techniques, including "circumstances . . . timing of their use, and the specific location where they were employed"); *Boyd v. ATF*, 570 F. Supp. 2d 156, 158-59 (D.D.C. 2008) (concluding ATF properly withheld detailed information regarding use of surveillance equipment).

Exemption 1

DFS withheld portions of records relating to a vendor pursuant to Exemption 1. To qualify for protection under Exemption 1, information must: (1) be a trade secret or commercial or financial information; (2) that was obtained from outside the government; and (3) disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained. *See* D.C. Official Code § 2-534(a)(1).

Pricing Information

In your appeal you concede that "specific line-item pricing in government contracts can potentially fall under the trade secret exemption." We agree, and find such redactions to be permissible pursuant to Exemption 1.

Vendor Communications and Records

DFS withheld the name of its vendor pursuant to Exemption 1. In order to qualify for Exemption 1, the record must contain "a trade secret or commercial or financial information." The D.C. Circuit has defined a trade secret, for the purposes of the federal FOIA, "as a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). The D.C. Circuit has also instructed that the terms "commercial" and "financial" used in the federal FOIA should be accorded their ordinary meanings. *Id* at 1290.

In support of its redactions of the vendor's name, DFS has provided a citation to *Friedman v. United States Secret Serv.*, 282 F.Supp. 3d 291, 299-300 (D.D.C. 2017). The government's vendor in *Friedman* was Raytheon; this fact was not redacted by the agency. *Id.* at 299. The portion of *Friedman* relied on by DFS is concerned with protecting Raytheon's client list, and not Raytheon's identity. *Id.* While this argument was not opposed by the plaintiff in *Friedman*, and the court's determination was that it was "deemed conceded," *id.*, we nonetheless also find that a client list of a government contractor may qualify as a "trade secret." As a result, redactions or withholdings of DFS's vendor's client list would be permissible pursuant to Exemption 1.

However, we do not read the holding in *Friedman* to be applicable to the name of DFS's vendor. The vendor's name, in and of itself, does not constitute a trade secret, commercial information, or financial information.[3]

Non-disclosure agreements

[3] We note that in the other case cited to extensively by DFS in its brief, *AP v. FBI*, 265 F.Supp. 3d 82, 90 (D.D.C. 2017), the FBI (i) withheld the name of its vendor, (ii) withheld some records pursuant to the federal trade secret exemption, (iii) but did not cite to the trade secret exemption as a justification for withholding the name of the vendor.

DFS's response does not acknowledge if a non-disclosure agreement ("NDA") exists. DFS's response states that "the release of any such agreement, even in redacted form, could be used to identify a given vendor or product." As a result, DFS concludes that it is justified in withholding such records pursuant to Exemption 1.

As discussed above, we do not find that the name of the vendor meets the threshold requirement of Exemption 1. Generally, NDAs are used as a tool to protect information subject to Exemption 1, by defining the scope of expectations as it relates to confidential commercial information that may be exchanged in the course of business. However, NDAs generally do not themselves contain trade secrets or commercial or financial information. Here, DFS has not provided this Office with adequate support for its assertion that the NDA contains "trade secret or commercial or financial information" from outside the government. As a result, DFS has failed to demonstrate that the NDA you requested, if it exists, warrants protection under Exemption 1.

Segregability

The last issue to be considered is whether DFS can redact the withheld records pursuant to Exemption 1 and 3. 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).

DFS has withheld in the entirety a large volume of individual case records pursuant to Exemption 3. On appeal, you note that you are only interested in case records relating to cases that are no longer open. DFS has provided a sample case report for our *in camera* review, and we conclude that portions of the record may be subject to redaction, but that the entire record may not be withheld. Redactions appear appropriate for Exemption 3(E) as originally asserted; and redaction pursuant to the other subsections of Exemption 3 may also be appropriate. DFS should begin releasing to you non-exempt portions of these records. [4]

DFS also withheld communications with federal agencies pursuant to Exemption 3. DFS should review those communications, and determine whether they qualify as "investigatory records" pursuant to the guidance in this decision. DFS should then provide any portions of such records that are non-exempt.

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[4] We note that the volume of responsive records appears to be significant, and that DFS may be entitled to be pre-paid fees pursuant to D.C. Official Code § 2-532 (b-3).

The records withheld by DFS pursuant to Exemption 1, should be reviewed by DFS to see if further portions may be subject to segregated release. DFS may continue to redact and withhold pricing information, or trade secrets such as client lists. DFS may not continue to withhold the name of the vendor pursuant to Exemption 1.

Conclusion

Based on the forgoing, we affirm DFS's decision in part, and remand in part, for DFS to release non-exempt portions of responsive records in accordance with the guidance in this decision. You are free to appeal DFS's subsequent, substantive response by separate appeal to this Office.

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: Rashee Raj, General Counsel, DFS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-119

April 15, 2019

VIA ELECTRONIC MAIL

DC Safe Healthy Playing Fields

RE: FOIA Appeals 2019-119

Dear DC Safe Healthy Playing Fields:

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 the grounds that the Department of General Services ("DGS") has not completed its production of records responsive to a request that you made under DC FOIA.

On August 27, 2018, you submitted a request to DGS for records relating to Oyster Adams and Janney Elementary School.

On April 1, 2019, your appeal was received by this Office. Your appeal challenges that as of that date you had not received all responsive records from DGS. On April 8, 2019, DGS sent us a response to your appeal, explaining the production it had made so far. DGS's response indicated that its search had returned several hundred responsive records, which DGS continues to review. DGS's response states that it has not yet completed its production, and this Office accepts that representation. DGS has constructively denied your request. *See* D.C. Official Code § 2-532(e).

As a result, we remand this matter to DGS to promptly complete the review that it is conducting of responsive records, and provide to you all non-exempt records or disclosable portions thereof. This constitutes the final decision of this Office. You are free to challenge any subsequent, substantive response(s) you receive from DGS by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: C. Vaughn Adams, FOIA Officer, DGS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-120

April 19, 2019

VIA ELECTRONIC MAIL

Mr. Lester Cuffie

RE: FOIA Appeals 2019-120

Dear Mr. Cuffie:

This letter responds to the administrative appeal you have 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 are challenging the response provided by the Department of General Services ("DGS") to your request.

You made a four part request for records to DGS relating to the Frank Reeves Center. An appeal was filed related to that request on February 11, 2019, and was docketed as FOIA Appeal 2019-76. In that appeal, DGS indicated that it provided records responsive to one part of your request on February 14, 2019. As a result, FOIA Appeal 2019-76 was dismissed as moot.

Subsequently, you filed this appeal on April 4, 2019, indicating that you had not received records responsive to three parts of your original request.[1] This Office notified DGS of your appeal, and the agency provided a response on April 4, 2019.[2] In its response to this appeal, DGS stated that its February 14, 2019 letter to you indicated that while it was providing you with records to one part of your request (the list of repairs) and that DGS did not possess records responsive to the other three parts of your request. Your appeal does not appear to challenge the adequacy of DGS's search, and we have no reason to question its adequacy.

Further, parts of your request are tantamount to asking a question or seeking the creation of a record. DGS is not required by DC FOIA to answer questions or create records that it does not already possess.[3]

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[1] In your appeal you identify the three parts of your request to which you have not received response records: "1. Please provide a list of all tenants of the Frank Reeves Center their amount of rent and/or lease terms; 2. Are there any requests for Proposals (RFP) to sale or exchange the property? 3. What in the past 2 years (2017-2018) and current efforts to address the homeless encampment outside of the building?"

[2] A copy of DGS's response is attached to this decision.

[3] *See Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985) ("FOIA creates only a right of access to records, not a right to personal services.").

Based on the foregoing, we affirm DGS's decision and 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: C. Vaughn Adams, FOIA Officer, DGS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-121

April 22, 2019

VIA ELECTRONIC MAIL

Ms. Angela Russell

RE: FOIA Appeals 2019-121

Dear Ms. Russell:

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") withholding of records requested by your firm under DC FOIA.

Background

Your firm submitted a request to MPD for records prepared by law enforcement officers related to an alleged sexual assault. Specifically, your firm requested the "investigative reports/records, photographs, recorded or written statement[s], electronic files, or correspondence regarding" the specified incident. On March 5, 2019, MPD denied your request, withholding responsive records as exempt from disclosure because their release would constitute a clearly unwarranted invasion of personal privacy pursuant to D.C. Official Code §§ 2-534(a)(2), (a)(3)(c).

Your appeal was noted by this Office on April 5, 2019. Your appeal states that your firm "would like to obtain as much information as possible to assist us with [the] representation of our client." On April 19, 2019, MPD responded to your appeal in a letter to this Office. In its response, MPD asserted that the records that you requested are investigatory and are exempt from disclosure by D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3(A)(i)").[1] In support of this position, MPD asserts that the release of the requested records would interfere with an ongoing enforcement proceeding. MPD's denial further cited to D.C. Official Code § 2-534(a)(3)(B) ("Exemption 3(B)"), asserting that release of the responsive records to the public would affect the rights of an accused person to a fair trial.

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

[1] MPD's response is attached for your reference.

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).

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). "[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies." *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency's decision. *Id.*

The records you seek here were compiled for the law enforcement purpose of investigating a sexual assault, and MPD has asserted that the criminal investigation is ongoing. As a result, MPD has met the threshold requirements for invoking Exemption 3, and our analysis turns on whether disclosure would interfere with an enforcement proceeding. On appeal, you present no substantive argument, and state generally that your firm is interested in receiving the responsive records. However, MPD has asserted that its investigation is ongoing and that disclosing the records you requested to the public could reveal the direction of its ongoing investigation and allow involved persons to tailor their testimony. In light of the statutory purpose of Exemption 3(A)(i), we find that MPD was justified in withholding from disclosure the investigatory records you requested. Having found the withholding permissible pursuant to Exemption 3(A)(i), we will not address the applicability of Exemption 3(B) or the two privacy exemptions.

Conclusion

Based on the foregoing, we affirm 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.

Sincerely,

The 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: 2019-122

April 25, 2019

VIA ELECTRONIC MAIL

Dr. Karthik Balasubramanian

RE: FOIA Appeals 2019-122

Dear Dr. Balasubramanian:

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"), regarding the response you received from the Department of Public Works ("DPW") to a request for records that you submitted.

Background

On March 26, 2019, you submitted a request to DPW which stated "I would like to know how many shifts DPW employees completed on bicycle for each day since September 1, 2018."

DPW replied your request by letter, advising you that it had completed a comprehensive search and did not find any records responsive to your request.

Your appeal was received by this Office on April 8, 2019. Your appeal contains a link to a news article which describes DPW's use of officers on bikes. The remainder of your appeal states "DPW said that it would have officers on bicycles. I don't understand how they don't have this information. Either they are lying or they are incompetent. Neither is acceptable."

Since DPW indicated that it did not possess any responsive records, we construed your appeal as a challenge to the adequacy of DPW's search. We notified DPW of your appeal and requested that it respond, which it did on April 15, 2019.[1] In its response, DPW described the search it conducted to locate records responsive to your search and reiterated its position that no responsive records were found. Attached to DPW's response was a declaration from a DPW employee stating that to the best of her knowledge, DPW does not maintain records as described in your request.

Discussion

[1] A copy of DPW's response is attached.

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 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 if they were "retained by a public body." D.C. Official Code § 2-502(18).

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. *See Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of Search

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. *See 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. *See 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). The 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).

DPW's response indicated that it determined that if responsive records existed they would most likely be found in the Parking Enforcement Management Administration ("PEMA"). DPW's response indicated that a search by the manager of PEMA did not locate any responsive records. Further, an affidavit from the manager of PEMA was attached to DPW's response. This affidavit clarifies that the records described in your request are not the type normally maintained by DPW in the course of its business. DPW has stated that it does not "log or track shifts for employees who use bicycles on their beats." We accept DPW's representations and find that it made a reasonable determination as to the likely locations of records responsive to your request and conducted an adequate search of these locations.

Creating Records or Answering Questions

The crux of your appeal is that you "don't understand how they don't have this information." The unstated assumption of your appeal is that the agency could identify the information you seek and create a document (e.g. a chart or letter) that answers your inquiry. DC FOIA does not obligate DPW to create records for you or to answer your questions. *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."). "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).

<u>Conclusion</u>

Based on the foregoing, we affirm DPW's response.

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: Christine Davis, General Counsel, DPW (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-124

April 26, 2019

VIA ELECTRONIC MAIL

Mr. James LaSala

RE: FOIA Appeals 2019-124

Dear Mr. LaSala:

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 provided by the Department of Health ("DOH") to your request for records.

On March 29, 2019, you submitted a request to DOH for "[a]ll writings, documents, research collected in connection with the notice of rule-making issued on January 7, 2019 to amend subchapter C, title 22, section 5704 . . . ." DOH interpreted this request as being for records related to two rule-makings that were noticed in February 2019 that related to the regulation section cited in your request. On April 8, 2019, DOH granted your request in part and denied your request in part. DOH provided you with seven documents. DOH withheld the remaining responsive records in their entirety as privileged material, pursuant to D.C. Official Code § 2-534(a)(4) ("Exemption 4").

On April 11, 2019, this Office received your appeal. Your appeal does not challenge DOH's assertions of privilege. Instead, your appeal argues that DOH's denial did not provide you with sufficient information about the number of withheld records, or those records' characteristics. Your appeal requests that this Office order DOH "to provide a description of those documents claimed to be exempt, and to 'describe the documents and the justifications for nondisclosure with reasonably specific detail . . .'"

This Office contacted DOH, to notify the agency of your appeal. On April 17, 2019, DOH sent this Office its response to your appeal, as well as a Vaughn index.[1] DOH's response explains that it withheld 19 records, which consisted of 166 pages. DOH's response goes on to explain the applicability of the attorney-client and deliberative process privileges to categories of these records. DOH's Vaughn index contains a description of the 19 withheld records, and a brief justification for the withholding of each.

Since your appeal was based on DOH not providing you with a detailed explanation of what it was withholding, and DOH has now provided a detailed explanation, we consider your appeal to

[1] A copy of DOH's response and Vaughn index is attached.

be moot and hereby dismiss it. You are free to challenge DOH's assertions of privilege by 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 the DC FOIA.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Phillip Husband, General Counsel, DOH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-125 & 2019-126

April 26, 2019

VIA ELECTRONIC MAIL

Ms. Rachel Cohen

RE: FOIA Appeals 2019-125 & 2019-126

Dear Ms. Cohen:

This letter responds to the administrative appeals 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 the Deputy Mayor for Education ("DME") failed to respond to your requests for records.

On March 21, 2019, you submitted two requests to DME for communications between DME and three named individuals. On April 11, 2019, you submitted an appeal to this Office on the grounds that as of that date you had not received any response or request for extension from DME. This Office notified DME of your appeal and asked that it explain its failure to respond to your records request. As of the date of this decision, DME has not provided an explanation of its failure to produce the requested records or otherwise respond to the request.

You filed a request for records. Before the statutory deadline had lapsed, DME failed to request an extension, provide the requested records, or provide you with a response explaining the withholding of records responsive to your request. DME has constructively denied your request. *See* D.C. Official Code § 2-532(e).

As a result, we remand this matter to DME to review responsive records promptly, and provide to you all non-exempt records or portions thereof. This constitutes the final decision of this Office. You are free to challenge any subsequent, substantive response(s) you receive from DME by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Gina Toppin, Chief of Staff, DME (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-127

April 30, 2019

VIA ELECTRONIC MAIL

Ms. Kimberly Kennedy

RE: FOIA Appeals 2019-127

Dear Ms. Kennedy:

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") withholding of records requested by you under DC FOIA.

Background

You submitted a request to MPD for a case file. On March 11, 2019, MPD denied your request, withholding responsive records as exempt from disclosure because their release would constitute a clearly unwarranted invasion of personal privacy pursuant to D.C. Official Code §§ 2-534(a)(2), (a)(3)(C).

Your appeal was noted by this Office on April 11, 2019. Your appeal argues that because of your relationship to the underlying events that a release of the case file to you would not be an invasion of privacy. On April 25, 2019, MPD responded to your appeal in a letter to this Office. In its response, MPD asserted that the records that you requested are investigatory and are exempt from disclosure by D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3(A)(i)").[1] In support of this position, MPD asserts that the requested records concern an ongoing investigation and that their release would interfere with an ongoing enforcement proceeding. MPD's denial further cited to D.C. Official Code § 2-534(a)(3)(B) ("Exemption 3(B)"), asserting that release of the responsive records to the public would affect the rights of an accused person to a fair trial.

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

[1] MPD's response is attached for your reference.

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).

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). "[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies." *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency's decision. *Id.*

The records you seek here were compiled for the law enforcement purpose of investigating a serious crime, and MPD has asserted that the criminal investigation is ongoing. As a result, MPD has met the threshold requirements for invoking Exemption 3, and our analysis turns on whether disclosure would interfere with an enforcement proceeding. On appeal, MPD has offered different justifications for its withholding. One of those justifications is MPD's assertion of Exemption 3(A)(i) that disclosing the records you requested could reveal the direction of its ongoing investigation and allow involved persons to tailor their testimony. We accept the representation that the investigation is ongoing, and that premature release of records would interfere with an enforcement proceeding. In light of the statutory purpose of Exemption 3(A)(i), we find that MPD was justified in withholding from disclosure the investigatory records you requested. Having found the withholding permissible pursuant to Exemption 3(A)(i), we will not address the applicability of Exemption 3(B) or the two privacy exemptions.

Conclusion

Based on the foregoing, we affirm 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.

Sincerely,

The 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: 2019-128

April 30, 2019

VIA ELECTRONIC MAIL

Ms. Amy Phillips

RE: FOIA Appeals 2019-128

Dear Ms. Phillips:

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 the grounds that the Metropolitan Police Department ("MPD") has not provided records in response to your November 7, 2018, request for records relating to Adverse Action Hearings.

On December 26, 2019, this Office received your prior appeal in this matter, which was docketed as FOIA Appeal 2019-53. This Office remanded the matter to MPD to disclose further records.

On April 12, 2019, you filed the instant appeal. Your appeal indicates that MPD provided 4 pages of responsive records on January 18, 2019, but that you had not yet received any additional responsive records. We asked MPD to provide an explanation to this Office of its failure to produce additional records. On April 25, 2019, MPD responded to this Office and indicated that subsequent to your appeal being filed that MPD released to you 34 case findings and determinations which were each approximately between 10 and 15 pages in length. MPD's response further indicated that the remaining responsive documents consist of transcripts and emails. The search for responsive emails is currently ongoing, as is the review of the transcripts which are hundreds of pages in length. MPD has represented that it intends to complete production within the next 30 days.

We accept MPD's representations, and remand this matter to MPD to continue promptly disclosing to you non-exempt, responsive records. This constitutes the final decision of this Office. You may challenge MPD's subsequent, substantive response by separate appeal to this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia in the Superior Court of the District of Columbia in accordance with 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: 2019-129

April 30, 2019

VIA ELECTRONIC MAIL

Mr. William Matzelevich

RE: FOIA Appeals 2019-129

Dear Mr. Matzelevich:

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 the grounds that the Department of Energy and Environment ("DOEE") failed to adequately respond to your request for records related to a stormwater management plan.

This Office received your appeal on April 15, 2019. Your appeal alleges that DOEE had not met the 15-day deadline to provide you with responsive records. We notified DOEE of your appeal and requested an explanation of the agency's failure to respond to your request for public records. On April 17, 2019, DOEE responded and copied you, indicating that the plans you requested could not yet be released because they were under review and had not yet been approved. On April 28, 2019, you filed a supplement to your appeal,[1] clarifying aspects of the sequence of events and reiterating that the requested records should be made available to you. On April 29, 2019, DOEE sent this Office an additional response that indicated the responsive records were mailed to you in a compact disc that day. [2]

Your appeal was based on DOEE's failure to provide you with certain responsive documents, and the agency now appears to have provided you with copies of those records. We therefore consider your appeal to be moot, and it is dismissed. You are free to challenge DOEE's substantive response by 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.
Sincerely,

Mayor's Office of Legal Counsel

cc: Ibrahim Bullo, FOIA Officer, DOEE (via email)

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[1] The filing characterizes itself as a new appeal but we will treat it as a supplement, as it relates to the same underlying request as the instant matter, which was docketed 10 business days ago.
[2] DOEE'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: 2019-130

May 2, 2019

VIA ELECTRONIC MAIL

Mr. Monty Yolles

RE: FOIA Appeals 2019-130

Dear Mr. Yolles:

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"), challenging the Office of Unified Communications' ("OUC") response to your January 24, 2019 request for records related to a 911 call.

Your appeal was received by this Office on April 17, 2019, and this Office notified OUC and requested that it respond to your appeal. OUC provided its response, which indicated that OUC denied your initial request to protect the personal privacy of the 911 caller. OUC's response notes that while you attached to your request information related to yourself and your client, you did not provide authorization from the person who made the 911 call. However, on appeal you have attached sufficient documentation to address the privacy concerns raised by OUC. In further communications with this Office since the filing of your appeal, OUC has stated that it will now make the requested records available to you.

Accordingly, since your appeal was based on OUC's denial, and the Agency has now represented that it will grant your request, we consider your appeal to be moot and it is hereby dismissed. You are free to challenge OUC's subsequent, substantive, response by 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. *See* D.C. Official Code § 2-537(a).

Sincerely,

Mayor's Office of Legal Counsel

cc: Ingrid Bucksell, FOIA Officer, 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: 2019-131

May 2, 2019

VIA ELECTRONIC MAIL

Mr. Fritz Mulhauser

RE: FOIA Appeals 2019-131

Dear Mr. Mulhauser:

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"), challenging the Metropolitan Police Department's ("MPD") production of records in response to your February 14, 2019, request for records related to MPD's body-worn camera ("BWC") program.

On March 25, 2019, this Office received your prior appeal in this matter, FOIA Appeal 2019-111. In that appeal, this Office remanded the matter to MPD to complete the additional search for responsive records that it initiated in response to your appeal, which MPD indicated would be complete within a week.

On April 19, 2019, you filed the instant appeal. Your appeal indicates that MPD has failed to provide responsive records and has not responded to your inquiries. We asked MPD to provide an explanation to this Office of its failure to produce additional records. On April 29, 2019, MPD responded to this Office and indicated that it was in the process of reviewing several thousand pages of emails, and that it anticipated that it would begin its rolling production by next week. MPD also indicated that this production will likely take over thirty days to complete. Further, MPD indicated that for parts of your request, it would refer you to the Office of Contracts and Procurement or the Office of the Chief Financial Officer.

We accept MPD's representations and remand this matter to MPD to promptly: (1) disclose to you on a rolling basis non-exempt, responsive records; and (2) identify to you the portions of your request which it does not maintain responsive records.

This constitutes the final decision of this Office. You may challenge MPD's subsequent response by separate appeal to this Office. Additionally, if you are dissatisfied with this decision, you may commence a civil action against the District of Columbia in the Superior Court of the District of Columbia in accordance with DC FOIA. *See* D.C. Official Code § 2-537(a).

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: 2019-132

May 10, 2019

VIA ELECTRONIC MAIL

Mr. Paul Gift

RE: FOIA Appeals 2019-132

Dear Mr. Gift:

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 § 2-531 *et seq.* ("DC FOIA"). In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") improperly redacted records you requested under DC FOIA.

Background

On April 2, 2019, you submitted a FOIA request to DCRA for the "ticket sales and comps reports" for two Professional Fighters League mixed martial arts ("MMA") events, occurring on July 5, 2018 and October 20, 2018. On April 16, 2019, DCRA advised that your request had been "granted in part and denied in part" and provided two documents, which they identified as responsive to your request. Both documents were released with redactions of "commercial or financial information" pursuant to D.C. Official Code § 2-534(a)(1) ("Exemption 1").[1]

This Office received your appeal on April 25, 2019. Your appeal argues that ticket sales and comps for MMA events are not trade secrets and their release would not cause competitive harm to an MMA promoter. In support of this contention, you attached to your appeal a 2017 article authored by you and published on "BloodyElbow.com," which indicates that a tax return showing ticket sales and comps for an MMA event held in New York had been disclosed and the data published. You argue that while publication of this data, which showed that "almost two-thirds of its tickets were actually given away for free," may have been embarrassing to the promotor, "its competitive position in the MMA industry was not 'substantially' harmed" and this information is important to those who follow the business of MMA. Therefore, in the instant appeal, you request all of the information that has been redacted by DCRA.

This Office contacted DCRA and notified the agency of your appeal. On May 2, 2019, DCRA provided this Office with a response to your appeal, which included a Vaughn index and

[1] Exemption 1 exempts from disclosure "[t]rade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained."

unredacted copies of the two withheld records for this Office's *in camera* review.[2] In its response, DCRA asserted that, as requested, you received information on ticket sales for both events, and that the redacted information was withheld pursuant to Exemption 1 for the following reasons: (1) records that reveal basic commercial sales, such as sales statistics, profits and losses, and inventories, or relate to the income-producing aspects of a business are deemed commercial information; (2) the responsive records at issue were deemed to contain commercial information; (3) the records were obtained from outside the government; and (4) the records are thus confidential. DCRA's response also suggests that a special event tax return, if they existed, would be in the possession of the D.C. Office of Tax and Revenue.

Discussion

At issue in the instant appeal is DCRA's application of Exemption 1. To withhold information under Exemption 1, the information must be: (1) a trade secret or commercial or financial information; (2) that was obtained from outside the government; and (3) would result in substantial harm to the competitive position of the person from whom the information was obtained. *See* D.C. Official Code § 2-534(a)(1). The D.C. Circuit has defined a trade secret, for the purposes of the federal FOIA, "as a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). The D.C. Circuit has also instructed that the terms "commercial" and "financial" used in the federal FOIA should be accorded their ordinary meanings. *Id* at 1290.

Exemption 1 has been "interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury." *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); s*ee also Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989). In construing the second part of this test, "actual harm does not need to be demonstrated; evidence supporting the existence of potential competitive injury or economic harm is enough for the exemption to apply." *Essex Electro Eng'rs, Inc. v. United States Secy. of the Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010)*; see also McDonnell Douglas Corp. v. United States Dep't of the Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004) (The exemption "does not require the party . . . to prove disclosure certainly would cause it substantial competitive harm, but only that disclosure would 'likely' do so.")(internal citations omitted).

Although commercial pricing information has been found to be exempt under FOIA, here, we conclude that the MMA promoter would not be competitively injured if the ticket sales and comps for the two MMA events at issue were released. *Cf. People for Ethical Treatment of Animals v. U.S. Dep't of Agric.*, No. CIV. 03 C 195-SBC, 2005 U.S. Dist. Lexis 10586, at *7 (D.D.C. May 24, 2005) ("insights into the company's operations, give competitors pricing advantages over the company, or unfairly advantage competitors in future business negotiations."); *Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976) (finding that insights into the operational strengths and weaknesses of a business allow others to

[2] A copy of DCRA's response and Vaughn index are attached.

engage in "[s]elective pricing, market concentration, expansion plans, . . . take-over bids[,] . . . bargain[ing] for higher prices . . . unregulated competitors would not be similarly exposed.").

While we conclude that the "ticket sales" and "comps reports" at issue constitute commercial or financial information, we do not believe that this information provides the kind of insight into the company's operations that can give a competitor pricing advantages, or otherwise confer upon competitors an unfair advantage that would warrant withholding the information under Exemption 1. Accordingly, we do not believe that the agency properly relied upon Exemption 1 to withhold the requested information. Thus, we remand this matter to DCRA with the following instructions:

(1) With respect to the document that relates to the July 5, 2018 event, based on our *in camera* review, at a minimum, the information on the lines titled "DC Sales Tax" and "Per Ticket Issued Fee" is responsive to the request for ticket sales and comps and should be released, along with any additional information, or lines, that contain information responsive to the request.

(2) With respect to the document that relates to the October 20, 2018 event, based on our *in camera* review, all of the information contained within the document is responsive to the request for ticket sales or comps and should be released.

Conclusion

Based on the foregoing, we remand this matter to DCRA with the instructions to take further action consistent with the 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 the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Erin Roberts, FOIA Officer, 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: 2019-133

May 20, 2019

VIA ELECTRONIC MAIL

Ms. Amanda Leith

RE: FOIA Appeals 2019-133

Dear Ms. Leith:

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 § 2-531 *et seq.* ("DC FOIA"). In your appeal, you challenge the response you received from the Metropolitan Police Department ("MPD") to your client's request for records.

Background

On December 11, 2018, your client submitted a FOIA request to MPD seeking the following records:

1. Please provide documentation regarding Special Police Officer . . . to include but not limited to: all job applications and related documents regarding education, training and examinations.

2. Please provide documentation of all complaints received by MPD officers and within the SOMB [Security Officers Management Branch] regarding the above-mentioned Special Police Officer, any supporting or related documentation, and any disciplinary action.

3. Please provide any complaints against A&D Security Consultants, or any of its agents, and related documentation including any disciplinary action filed with MPD or with SOMB.

4. Please also provide the total number of individuals currently commissioned as Special Police Officers and the number of complaints received regarding SPOs for 2016, 2017, and 2018 to date.

In response, MPD denied your request, in part. With respect to the public records sought in items one (1) and four (4), MPD determined that your request should be submitted to the

Department of Consumer and Regulatory Affairs ("DCRA").[1] With respect to the public records sought in item two (2), MPD denied the request on the grounds that disclosure of the requested records would constitute a clearly unwarranted invasion of personal privacy under D.C. Official Code § 2-534(a)(2) ("Exemption 2"). Finally, with respect to item three (3), MPD advised that a search of their records yielded no responsive records.

This Office received your appeal on April 26, 2019, which concerns the public records sought in item two (2), and which is the subject of the instant decision. Specifically, you challenge MPD's failure to release documentation of complaints received about the named SPO, arguing that the SPO has no privacy interest in complaints of misconduct lodged against him. In support of this, you cite to D.C. Official Code § 5-113.01, which mandates that certain records be kept by MPD, and D.C. Official Code § 5-113.06, which provides that of these mandated records, general complaint files, records of lost, missing, or stolen property, and arrest books shall be open to public inspection when not in actual use. In light of the foregoing, you assert that even if there were more than a *de minimus* privacy interest in the records sought, it is outweighed by the significant public interest advanced through disclosure.

MPD sent this Office a response to your appeal on May 6, 2019.[2] MPD confirms its earlier position that the release of complaint records regarding the named SPO would constitute a clearly unwarranted invasion of personal privacy and is exempt from release pursuant to D.C. Official Code § 2-534(a)(2). However, MPD noted that subsequent to the filing of this appeal, it advised you as follows: (1) it did not maintain a record of complaints made against SPOs for the requested time period; (2) since SPOs are not employed by MPD, any complaints about their conduct would have been referred to the company for which the SPO was employed; and (3) the paper and electronic files of the department's Security Officers Management Branch were searched for responsive documents with negative results with respect to the subject officer, A&D Security Consultants, and any other complaint records.

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

[1] While not the subject of the instant appeal, as indicated, we note that MPD's response to the public records sought in items (1) and four (4) is deficient because the response fails to clarify whether a search had been conducted to determine whether MPD had responsive records. Pursuant to D.C. Code § 2-532(a-2), "[i]n responding to a request for records . . . , a public body shall make reasonable efforts to search for the records in electronic form or format . . . ." Although MPD "determined" that the request for these records should be submitted to DCRA, MPD failed to first indicate whether a search had been conducted, and if any responsive records were found.

[2] A copy of MPD's response is attached.

public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

Given MPD's subsequent communications with you, as noted above, at issue in this appeal is MPD's failure to provide documentation responsive to item 2 - all complaints received by MPD officers and within the Security Officers Management Branch for the named SPO. Although MPD initially denied your request for this information on the grounds that disclosure of the requested records would constitute a clearly unwarranted invasion of personal privacy under Exemption 2, MPD's subsequent response upon the submission of this appeal suggests that no initial search had been conducted, and that when that search was conducted (after the appeal was submitted), MPD determined that it did not possess any records responsive to the requests (set forth in items two (2) and three (3)).

Notwithstanding the above, MPD has now conducted a search for all complaints received by MPD officers and within the Security Officers Management Branch for the named SPO and has indicated that no responsive documents exist. Based upon MPD's representations, we hereby dismiss the instant appeal.

Conclusion

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: 2019-136

May 17, 2019

VIA ELECTRONIC MAIL

Ms. Sandra Robinson

RE: FOIA Appeals 2019-136

Dear Ms. 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 challenge the response you received from the Metropolitan Police Department ("MPD") to your request for the "criminal investigation file" of a named person who is not yourself.

Background

On April 10, 2019, you submitted a FOIA request to MPD for the "criminal investigation file" of a named person who is not yourself. On April 11, 2019, MPD denied your request, on the grounds that absent authorization, disclosure would constitute a clearly 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").

This Office received your appeal on April 29, 2019. On appeal, you challenge MPD's denial, arguing that Exemptions 2 and 3 are not applicable because releasing responsive records would not implicate a privacy interest. Your appeal argues that because the records you have requested relate to a convicted person, whose crimes have been widely noted by the courts and media, that the person does not maintain a privacy interest in the records. Alternatively, your appeal asks that reasonably redacted records be released, pursuant to D.C. Official Code § 2-534(b).

MPD sent this Office a response to your appeal on May 13, 2019.[1] MPD reaffirms its earlier position that under Exemptions 2 and 3, any responsive records would be exempt because the release of any potentially responsive records "would constitute a clearly unwarranted invasion of privacy."

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

[1] A copy of the MPD's response is attached.

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.

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).

Exemption 2

Exemption 2 prevents disclosure of "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Under Exemption 2, 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.*

On appeal, you argue that there can be no privacy interest in the responsive records, because the individual has been convicted and details relating to his crimes have been made public by the courts and the media. In support of this argument, your appeal cites to *Pinson v. United States Dep't of* Justice, 202 F. Supp3.d 86, 99 (D.D.C. 2016). In *Pinson*, the court found that "[t]he privacy interests of these [convicted and unconvicted] individuals remain substantial, and these individuals are not precluded from retaining a privacy interest merely on the basis of their public prosecutions." 202 F. Supp. 3d at 99. Similarly, we find that a prior release of information in some form does not eliminate an individual's privacy interest in further disclosures.[2]

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. The instant matter concerns a request for the "criminal investigation file" of a person other than yourself. The courts have found "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *Reporters Comm. For Freedom of Press*, 489 U.S. at 780. Here, we find that disclosing the investigative file of a person who is not yourself, and from whom you have not provided written authorization, would constitute an unwarranted invasion of that person's personal privacy.

[2] *See also Reporters Comm. For Freedom of Press*, 489 U.S. at 762; *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."); *Edmonds v. FBI*, 272 F. Supp. 2d 35, 53 (D.D.C. 2003) (finding that media identification of persons mentioned in a law enforcement file "does not lessen their privacy interests or 'defeat the exemption,' for prior disclosure of personal information does not eliminate an individual's privacy interest in avoiding subsequent disclosure by the government").

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of DC FOIA, a record is deemed to be of "public interest" if it would shed light on an agency's conduct. *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

> 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.

Id. at 1492-93.

We find that the release to a third party of these police records would be an unwarranted invasion of privacy and would not "contribute *significantly* to public understanding of the operations or activities of the government. *See Berger v. I.R.S.*, 487 F. Supp. 2d 482, 505; *see also Hines v. D.C. Bd. of Parole*, 567 A.2d 909, 912 (D.C. 1989) (noting that "courts are generally reluctant 'to give third parties access to the presentence investigation report prepared for some other individual or individuals'"). As a result of the existence of a privacy interest and the lack of a relevant public interest in the records at issue, MPD properly withheld the records, pursuant to Exemption 2 of the DC FOIA.

Further, responsive records could not be reasonably segregated, pursuant to D.C. Official Code § 2-534(b), due to the nature of the requesting records tied to a named individual. *See Mueller v. U.S. Dep't of the Air Force*, 63 F. Supp. 2d 738, 744 (E.D. Va. 1999) (noting that when requested documents relate to a specific individual, "deleting [her] name from the disclosed documents, when it is known that she was the subject of the investigation, would be pointless").

Conclusion

Based on the forgoing, 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 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: 2019-137

May 28, 2019

VIA ELECTRONIC MAIL

Mr. Fritz Mulhauser

RE: FOIA Appeals 2019-137

Dear Mr. Mulhauser:

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 provided by the Office of the Chief Technology Officer ("OCTO") to your request for records under the DC FOIA.

Background

In June 2018, you submitted a request to OCTO for any "record showing OCTO response to an opinion from the Office of Open Government (OOG)," concerned with OCTO requiring FOIA requesters to specify email addresses of government recipients before conducting an email search. On October 1, 2018, in FOIA Appeal 2018-170, we found that OCTO had constructively denied your request and remanded the request to OCTO to conduct an adequate search.

On April 29, 2019, OCTO granted your request in part and provided two responsive records, an email and a powerpoint. OCTO denied your request in part, withholding an unstated number of documents in their entirety. The withholdings were made by OCTO pursuant to D.C. Official Code § 2-534(a)(4) ("Exemption 4"), and specifically the deliberative process privilege.

You appealed OCTO's response to this Office on April 30, 2019. Your appeal argues that the search appears to be inadequate, because of the apparent disparity between the impact of the OOG opinion and the small number of records identified as responsive. Specifically, you argue that an OCTO employee had communicated that OCTO had engaged in an "initiative" and had provided "guidance" and a "synopsis" to agency counsel. Your appeal argues that this communication suggests that additional records should exist. Second, you request this Office review the withheld records, as you argue that OCTO's assertion of Exemption 4 is not sufficiently explained in the denial letter.

This Office contacted OCTO, and notified the agency of your appeal. On May 3, 2019, OCTO provided this Office with a response to your appeal, including a *Vaughn* Index and a copy of the

withheld documents for our *in camera* review.[1] In its response, OCTO reasserted, generally, its position that Exemption 4 protects the withheld records from disclosure. On May 21, 2019, OCTO provided this Office with a supplemental declaration that explained the search conducted. OCTO's declaration explained that OCTO searched a single email account, as well as two shared drives for responsive records.

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.

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).

Exemption 4

In order to adjudicate your appeal, OCTO provided us with a *Vaughn* Index and the 3 withheld documents at issue for our *in camera* review.

Exemption 4 vests public bodies with discretion to withhold "inter-agency or intra-agency memorandums 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). As a result, Exemption 4 encompasses the deliberative process privilege. *See McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011). 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.*

This decision will review the applicability of Exemption 4 to the three records identified by OCTO's *Vaughn* Index.

Document 1 and 3

[1] A copy of OCFO's response and *Vaughn* Index are attached.

The first and third documents are emails that were withheld in their entirety.

We agree with OCTO, that portions of the records are embraced by the deliberative process privilege. Portions of the records involve discussions of a draft document, the sharing of opinions, and the solicitation of information by supervisors in the decision making process. These portions may continue to be withheld.

We find, however, that not all portions of the emails in Documents 1 and 3 are deliberative in nature. Portions of the emails are concerned solely with scheduling and availability of personnel. These portions are not "subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." *Coastal States Gas Corp.*, 617 F.2d at 867; *Prop. of the People, Inc. v. OMB*, 330 F. Supp. 3d 373, 385 (D.D.C. 2018) ("The release of factual information regarding who attended meetings, who scheduled meetings, and where meetings were held is not intertwined with any deliberative process in these particular documents."). Additionally, we do not find that the release of timing would implicitly reveal decision making. *C.f. Wolfe v. Department of Health and Human Services*, 839 F2d 768, 775 (D.C. Cir.).

Revealing these portions would not reveal the thought process of the agency or the substance of its decision-making process. These portions of the records do not reveal any suggestions, recommendations, or proposals. At most, the overall topic of discussion is revealed, but we do not find that revealing this would have the effect of discouraging candid discussion if released. That is to say, these portions of the records are pre-decisional but are not deliberative, and are therefore not embraced by the privilege or Exemption 4. As a result, the scheduling portions of Document 1 and 3 may be segregated and released pursuant to D.C. Official Code § 2-534(b).

Document 2

Document 2 is an email chain that was withheld in its entirety.

After an *in camera* review, we agree with OCTO that the record is deliberative and pre-decisional. *Coastal States Gas Corp.*, 617 F.2d at 866. All of the emails are predecisional as they relate to employees' thoughts on drafting language for a policy that had not been adopted yet. Additionally, the substance of the redacted email chain is deliberative in nature as it reveals the opinions of the drafter. As such, OCTO was justified in withholding Document 2 pursuant to Exemption 4.

Adequacy of Search

On appeal, you have challenged the adequacy of OCTO's search.

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. *See 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. *See 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). The 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).

OCTO supplemented its original response to this Office by providing a declaration which described the search that it conducted. OCTO made the determination that three record repositories were "most likely" to contain responsive records: (i) the "Y" drive, (ii) the "Z" drive, (iii), and the sole email inbox of OCTO's Supervisory Attorney Advisor. OCTO's declaration explains that the Supervisory Attorney Advisor drafts and reviews all proposed OCTO policies and conducts legal sufficiency reviews. OCTO's 11 month search[2] and review yielded 4 emails that it deemed responsive, along with a power point presentation. None of the emails deemed responsive mention the OOG advisory opinion that is the crux of your request.

We accept OCTO's representations regarding the search that it conducted but find that it did not make a reasonable determination as to the likely locations of records responsive to your request. "The agency 'cannot limit its search' to only one or more places if there are additional sources 'that are likely to turn up the information requested.' *Valencia-Lucena v. United States Coast Guard, FOIA/PA Records Mgmt.*, 180 F.3d 321, 326 (1999)) (quoting *Oglesby*, 920 F.2d at 68). OCTO's search of its email repositories was limited to a single inbox, deemed "most likely" to contain responsive records. As said by the court, and quoted by the OOG opinion related to your

[2] The search terms used by OCTO were "Mulhauser," "Fritz Mulhauser," (the relevant OOG opinion was addressed to you), "FOP," "DC Court of Appeals," "Office of Open Government ("OOG")" (it is not clear if "OOG" and "Office of Open Government" were run as separate search terms), "policy" and "email."

request:"[O]n this record we have no idea why searching all of [agency's]'s email accounts was infeasible, much less why it might have been reasonable for her to limit her search to the eight accounts selected." *FOP v. District of Columbia*, 139 A.3d 853, 865 (2016).

It would appear to be within OCTO's ability to conduct a search of all agency employees' inboxes; in the 11 months since you made your request, OCTO certainly has had the time to conduct such a search. However, at a minimum the OOG decision referenced in your request is addressed to the former Chief Technology Officer Archana Vemulapalli's email. An adequate search would have included a search of that inbox. Additionally, an adequate search would have included a search of the email records of all OCTO staff who were involved in the Email Search Request ("ESR") system, which is the system at issue in the OOG memo. Such staff might include the OCTO FOIA Officer or the technology staff who administered ESR during the time period relevant to your request.

Additionally, it is not clear that OCTO conducted an adequate search of the repositories that it identified. Your request is related to a specific OOG decision, which OOG labeled as "OOG-0004_5.13.17_AO" and OCTO did not search for this or some variant, such as "OOG-0004[.]" OCTO also did not search for "Email Search Request" or "ESR." Additionally, OCTO did not search for "BEGA," nor is it clear whether OCTO searched for "OOG" as a stand-alone term – both are terms which would have been likely to capture any responsive records which may exist. Lastly, it is not clear if the search of the emails and shared drives was a search of file titles, or of also file content.

Conclusion

Based on the foregoing, OCTO's response to your request is affirmed in part and is remanded in part. Within ten business days from the date of this decision, OCTO shall review the documents it withheld and disclose to you nonexempt portions in accordance with the guidance in this decision. Additionally, OCTO shall promptly conduct an additional search, in accordance with the guidance in this decision. To the extent that the review and additional search described above yield a volume of responsive records which cannot be promptly produced to you, we direct that OCTO should promptly begin and continue production of responsive documents on a rolling basis. You may challenge OCTO's subsequent response or failure to respond by separate appeal to this Office.

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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Andrew Gerst, Attorney Advisor, OCTO (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-138

May 17, 2019

VIA ELECTRONIC MAIL

Ms. Valerie Smith

RE: FOIA Appeals 2019-138

Dear Ms. Smith:

This letter responds to the administrative appeal you have 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 are challenging the response provided by the Department of Health ("DOH") to your request.

You made a request for records to DOH relating to a complaint against a nursing license. On April 30, 2019, DOH responded to your request by informing you that the only record responsive to your request was the complaint itself, which DOH believed had been provided to you.

Subsequently, this appeal was received by this Office on May 1, 2019, indicating that you had not received the "original complaint" but instead a "Summary of Original Allegations/Complaint." This Office notified DOH of your appeal, and the agency provided a response on May 7, 2019.[1] In its response to this appeal, DOH stated that on May 2, 2019, DOH had provided you with a complete copy of the complaint as well as the e-mail correspondence between the complainant and DOH staff. DOH's response notes that you had responded to this production, and requested that DOH provide you with handwritten notes from a telephone call and the "guidance" referenced in one of the produced emails. DOH's response states that relevant staff members were asked about such records, and indicated that no handwritten notes or written guidance was generated in relation to the complaint. DOH's response indicates that it does not possess other records responsive your request that it has not already provided to you.

We accept DOH's representations that it has searched relevant record repositories and that the handwritten records contemplated by your appeal were not located. DOH is not required by DC FOIA to create records that it does not already possess.[2] We conclude that DOH has conducted an adequate search.

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[1] A copy of DOH's response is attached to this decision.
[2] *See Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985) ("FOIA creates only a right of access to records, not a right to personal services.").

Based on the foregoing, we affirm DOH's decision and 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: Edward Rich, Senior Assistant General Counsel, DOH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-139

May 17, 2019

VIA ELECTRONIC MAIL

Ms. Lacey Miller

RE: FOIA Appeals 2019-139

Dear Ms. Miller:

This letter responds to the administrative appeal you have 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 are challenging the response provided by the Department of Health ("DOH") to your request.

You made a request for records to DOH for emails between employees of DOH and a specified email address. On March 20, 2019, DOH responded to your request by informing you that after conducting a search no records responsive to your request were identified. Subsequently, you sent DOH a document which showed emails between DOH staff and the specified email address. As a result, DOH agreed to conduct a second search.

This appeal was received by this Office on May 1, 2019. The appeal indicates that you had not received any records since DOH represented it would conduct an additional search. This Office notified DOH of your appeal, and the agency provided a response on May 10, 2019, indicating that a second search was ongoing. On May 17, 2019, DOH sent an additional response, which you were copied on, that attached the only responsive record DOH's subsequent search identified.

Since your appeal was based on DOH's failure to respond to you with the results of its second search, and the agency has now responded, we consider your appeal to be moot and hereby dismiss it. You are free to challenge DOH's substantive response by separate appeal to this Office. 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: Edward Rich, Senior Assistant General Counsel, DOH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-140

May 17, 2019

VIA ELECTRONIC MAIL

Mr. Christopher Sullivan

RE: FOIA Appeals 2019-140

Dear Mr. Sullivan:

This letter responds to the administrative appeal you have 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 are challenging the response provided by the Department of Human Resources ("DCHR") to your request.

You made a request to DCHR for a list of all Excepted Service employees at the DC Fire and Emergency Medical Services Department ("FEMS") as well as records that relate to these employees' compliance with the Excepted Service domicile requirement. On April 25, 2019, DCHR granted your request. DCHR provided you with a list of FEMS employees in the Excepted Service.[1] In addition, DCHR provided you with 18 pages of responsive records that were redacted.[2] In your appeal, you challenge DCHR's response by expressing disagreement as to whether certain employees are members of the Career Service or the Excepted Service. Additionally, your appeal expresses your general concerns about employee compliance with domicile requirements.[3] Your appeal does not appear to challenge the redactions DCHR made.

This Office notified DCHR of your appeal, and the agency provided a response on May 9, 2019.[4] In its response to this Office, DCHR reiterated that it is not in possession of any responsive records that it has not already provided to you. The basis of your appeal appears to be your disagreement with DCHR about the status of several employees. Notwithstanding your belief that additional records should exists, we accept DCHR's representations and conclude that it has

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[1] The list noted that some of the employees had been incorrectly coded as being a part of the Excepted Service, when in actuality, they were a part of the Career Service.
[2] DCHR's letter acknowledged that it did not possess responsive records for each corresponding Excepted Service employee in its list. DCHR's letter suggested that a separate agency, the Mayor's Office of Talent and Appointments, might be an agency which possesses such records, as it is the agency that primarily handles Excepted Service employees.
[3] Our jurisdiction here is limited to reviewing the withholding of records. *See* D.C. Official Code § 2-537(a). This decision will not address arguments unrelated to DC FOIA.
[4] A copy of DCHR's response is attached to this decision.

conducted an adequate search. DCHR was not and is not required by DC FOIA to create records that it does not already possess, even if you believe that DCHR should have such records.[5]

Based on the foregoing, we affirm DCHR's decision and 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: Aphrodite Hadjiloucas, FOIA Officer, DCHR (via email)

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[5] *See Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985) ("FOIA creates only a right of access to records, not a right to personal services.").

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-142

May 21, 2019

VIA ELECTRONIC MAIL

Mr. Benjamin Weinstein

RE: FOIA Appeals 2019-142

Dear Mr. Weinstein:

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") withholding of records you requested under DC FOIA.

Background

You submitted a request to MPD for "body cam footage and photos" related to a traffic accident. On May 7, 2019, MPD denied your request in its entirety, citing to D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3(A)(i)") which allows for the withholding of investigatory records when the release of such records would interfere with an enforcement proceeding. Additionally, MPD's denial cited to D.C. Official Code § 2-534(a)(2) ("Exemption 2"), which allows for the withholding of investigatory records when the disclosure would constitute an unwarranted invasion of personal privacy.

On appeal, you state that the disclosure of the records would be helpful to you for purposes of an insurance claim. Additionally, your appeal states your belief that release of the records would "not compromise any active investigations or reveal the suspect in the crime."

On May 20, 2019, MPD responded to your appeal in a letter to this Office.[1] In its response, MPD reaffirms that the investigation is still open. As a result, MPD's response reasserts that the responsive records may be withheld pursuant to Exemption 3(A)(i). MPD's response explains that disclosure of the responsive records would interfere with an enforcement proceeding by prematurely revealing to potential suspects or witnesses the direction and pace of the investigation.

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] MPD's response is attached for your reference.

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).

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). "[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies." *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency's decision. *Id.*

The purpose of Exemption 3(A)(i) is to protect against releasing investigatory details that would interfere with law enforcement efforts. *See Dickerson v. DOJ*, 992 F.2d 1426, 1432 (6th Cir. 1993) (finding that an investigation into 1975 disappearance remained ongoing and therefore was still "prospective" law enforcement proceeding.) The records you seek here were compiled for the law enforcement purpose of investigating an accident, and MPD has asserted that the investigation is still ongoing. MPD has indicated that because the investigation is still ongoing that disclosing the requested records could reveal the direction of the matter to potential suspects or witnesses, which would have the effect of interfering with prospective enforcement proceedings. In light of the statutory purpose of Exemption 3(A)(i), we find that MPD is justified in withholding from disclosure the investigatory records you requested.

Conclusion

Based on the foregoing, we affirm 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.

Sincerely,

The 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: 2019-143

May 17, 2019

VIA ELECTRONIC MAIL

Ms. Jessica Baker

RE: FOIA Appeals 2019-143

Dear Ms. Baker:

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") withholding of records you requested under DC FOIA.

Background

You submitted a request to MPD for records related to the investigation of an accident. On April 9, 2019, MPD denied your request in its entirety, asserting that the records sought related to an ongoing investigation. MPD's denial cited to D.C. Official Code § 2-534(a)(3)(B) ("Exemption 3(B)"), which allows for the withholding of investigatory records when the release of such records would interfere with an individual's right to a fair trial.

On appeal, you state your belief that the relevant investigation has concluded, which presumably you believe makes the exemption asserted by MPD no longer applicable.

On May 16, 2019, MPD responded to your appeal in a letter to this Office. [1] In its response, MPD asserts that the relevant matter is still undergoing review by the Office of the United States Attorney for the District of Columbia. As a result, MPD reasserted its position that the records are protected from disclosure by Exemption 3(B). Additionally, MPD asserted that withholding the responsive records would be permitted by D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3(A)(i)") because disclosure would interfere with an enforcement proceeding.

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

[1] MPD's response is attached for your reference.

. . ." *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).

Exemption 3(A)(i)

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). "[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies." *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency's decision. *Id.*

The purpose of Exemption 3(A)(i) is to protect against releasing investigatory details that could interfere with law enforcement efforts. *See Dickerson v. DOJ*, 992 F.2d 1426, 1432 (6th Cir. 1993) (finding that an investigation into 1975 disappearance remained ongoing and therefore was still "prospective" law enforcement proceeding.) The records you seek here were compiled for the law enforcement purpose of investigating an accident, and MPD has asserted that the matter is still being reviewed by prosecutors. MPD has indicated that because the matter is still ongoing that disclosing the sought records could reveal the direction of the matter and allow involved persons to tailor their testimony. In light of the statutory purpose of Exemption 3(A)(i), we find that MPD is justified in withholding from disclosure the investigatory records you requested.

<u>Conclusion</u>

Based on the foregoing, we affirm 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.

Sincerely,

The 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: 2019-144

May 23, 2019

VIA ELECTRONIC MAIL

Mr. John McFarland

RE: FOIA Appeals 2019-144

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"), challenging the response the Department of Consumer and Regulatory Affairs ("DCRA") provided to your request.

Background

On March 31, 2019, you submitted a records request to DCRA for surveillance footage of the "2nd floor of the building located at 1100 4th Street, SW, Washington, D.C." on three specified dates in 2017.

On April 5, 2019, DCRA responded to your request by stating that it was unable to locate responsive records.

On May 10, 2019, this Office docketed your appeal. In your appeal, you ask that this Office instruct DCRA to produce the video tapes that you have requested. Your appeal states that you asked DCRA where it conducted its search, and that DCRA did not answer your question.

This Office notified DCRA of your appeal. On May 16, 2019, DCRA responded.[1] DCRA's response reiterated that it does not have the records you seek. DCRA explained the search that it conducted of the two divisions most likely to possess responsive records -- Support Services and the Office of Information Systems. DCRA's response indicated that staff at both divisions reported that the cameras referenced in your request appear to have been inoperative during the period covered by your request.

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

[1] A copy of DCRA's response is attached.

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 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).

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).

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). The 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).

DCRA's response explains that DCRA determined that that if the records you requested exist, they would be maintained by either Support Services or the Office of Information Systems. DCRA contacted the relevant employees associated with these divisions, who in turn conducted a search. These two offices did not locate responsive records, and both indicated that the cameras identified in your request have been inoperative. In the absence of any evidence to the contrary,

we accept DCRA's representations and find that it made a reasonable determination as to the locations of the records you requested and conducted an adequate search of these locations for responsive records.

Conclusion

Based on the foregoing, we affirm DCRA'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: Genet Amare, FOIA Officer, 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: 2019-145

May 23, 2019

VIA ELECTRONIC MAIL

Mr. John McFarland

RE: FOIA Appeals 2019-145

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"), challenging the response the Department of General Services ("DGS") provided to your request.

Background

On May 6, 2019, you submitted a records request to DGS for surveillance footage of the "2nd floor of the building located at 1100 4th Street, SW, Washington, D.C." on three specified dates in 2017.

On May 7, 2019, DGS responded to your request by stating that the 2017 footage was "beyond the 30-business day retention period and has been overwritten."

On May 10, 2019, this Office docketed your appeal. In your appeal, you ask that this Office instruct DGS to produce the video tapes that you have requested. Your appeal asks that DGS "access their backup system" to get the requested footage.

This Office notified DGS of your appeal. On May 20, 2019, DGS responded.[1] DGS's response reiterated that it does not have records responsive to your request. DGS explained the search that it conducted of the Protective Service Division. DGS indicates that this search located no responsive records; further DGS explained that it "cannot store indefinitely video records" and as a practice, only maintains video for a 30 day "retention period."[2]

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

[1] A copy of DGS's response is attached.
[2] A "retention period" is the period of time in which an agency maintains old records before disposing of them.

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 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).

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).

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). The 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).

DGS's response indicates that it determined that that if the records you requested existed, they would be maintained by the Protective Service Division. DGS contacted a relevant employee within this division, who in turn conducted a search. Relevant staff indicated that videos are only maintained for a 30-day retention period before they are automatically overwritten. Your request was for footage from 2017, which is well outside the retention period. In the absence of any

evidence to the contrary, we accept DGS's representations and find that it made a reasonable determination as to the locations of the records you requested and conducted an adequate search of these locations for responsive records.

Conclusion

Based on the foregoing, we affirm DGS'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: C. Vaughn Adams, FOIA Officer, DGS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-146

May 28, 2019

VIA ELECTRONIC MAIL

Ms. Jenny Gathright

RE: FOIA Appeals 2019-146

Dear Ms. Gathright:

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 the grounds that the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") improperly denied your April 8, 2019 records request under the DC FOIA for New Communities Initiative Housing and Wellness surveys ("surveys").

Background

On May 2, 2019, DMPED denied your request and explained that it was withholding responsive records pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2").[1]

On May 10, 2019, your appeal was received by this Office. You argue that DMPED has a duty under FOIA to provide reasonably segregable, non-exempt portions of records. Your appeal states that you have seen the questions in the surveys and believe portions could be redacted. You further argue that there is a public interest in the release of this information, because you believe "the public conversation about redevelopments will be strengthened if members of the public have access to more complete information . . ."

This Office notified DMPED of your appeal, and DMPED responded to this Office on May 22, 2019, reaffirming its position that the surveys were properly withheld pursuant to Exemption 2. DMPED further argues that that there is no public interest in disclosing the surveys, as they would not shed light on the agency's performance of its statutory duties. DMPED argues that the sample size of respondents is so small that identification of the survey takers would be possible by releasing any portion of the survey. As such DMPED argues that redaction of the exempt portions of the responsive records would leave the document unreadable.[2]

Discussion

[1] Exemption 2 prevents disclosure of "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

[2] DMPED has provided a sample of the withheld records for this Office's *in camera* review.

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, the 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.

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).

The records at issue here are surveys.

Under Exemption 2, 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). 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). The first part of the privacy analysis is determining whether a sufficient privacy interest exists. *Id.*

> The privacy interest in the FOIA balancing analysis "encompasses the individual's control of information concerning his or her person," including names, addresses, and other identifying information. *Padou*, *supra*, 29 A.3d at 982. Moreover, individuals have a privacy interest in personal information even if it is not of an embarrassing or intimate nature. *U.S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 600, 102 S. Ct. 1957, 72 L. Ed. 2d 358 (1982).

District of Columbia v. FOP, 75 A.3d 259, 265-66 (D.C. 2013)

DMPED characterizes the surveys as containing information such as "names, addresses, household information, personal financial history, and physical and behavioral health information, including information about chronic disease, disability, and substance use." DMPED contends that there is a privacy interest in such information. Having reviewed the sample surveys, we find that there is a privacy interest in the identifying information contained therein.

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of the DC FOIA, a record is deemed to be of "public interest" if it would shed light on an agency's conduct. *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

> 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.

Id. at 1492-93.

On appeal, you argue that the public debate would benefit from the release of the information contained in the surveys. The surveys primarily concern individuals, and while they provide data upon which DMPED may rely in informing its decision making, the surveys themselves reveal little of DMPED conduct. As a result, we do not find that the public interest which would be served by the production of identifying information outweighs the substantial intrusion upon the personal privacy interest of the individual respondents to the surveys.

Under D.C. Official Code § 2-534(b), even when an agency establishes that an exemption is applicable, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). The phrase "reasonably segregable" is not defined under the 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).

DMPED has argued that segregation is not possible, because the identities of the individuals could be determined from the content of the survey answers. DMPED argues that redacting only the names of the individuals would insufficiently protect the privacy interests because the "small and contained sample size of individuals," along with the "NCI residents hav[ing] a strong familiarity with their neighbors" would allow individuals to "easily be identified by piecing together information contained in the NCI Surveys."

We acknowledge the difficulty of protecting the privacy of individuals when documents concern a small sample size of individuals, as well as the harm caused by the release of individually identifying information. *See Alirez v. NLRB*, 676 F.2d 423, 428 (10th Cir. 1982), *McLeod v. Pena*, No. 94-1924, slip op. at 4 (D.D.C. Feb. 9, 1996), and *Rothman*, No. 94-8151. As the DC Court of Appeals has explained, identifying information may be broader than names and addresses when there is a small sample size of individuals:

> [A]s the Superior Court rightly appreciated, "what constitutes identifying information regarding a subject . . . must be weighed not only from the viewpoint of the public, but also from the vantage of" the FOP's members who would have been familiar with the MPD's operations and personnel. Given the particularization of the FOP's individual FOIA requests and with the information disclosed in the files, including the details of the disciplinary infraction, the year

> (or narrower time frame) in which the infraction occurred, and various other facts, FOP members interested in identifying the subject of the disciplinary proceedings and familiar with the Police Department would have little difficulty winnowing down the possibilities to only a few candidates. It is quite plausible that, in many cases, the additional clues provided by the officer's gender or race or the specific date of a key event would enable such a curious and well-informed reader to eliminate all but one of those possible suspects.

FOP v. District of Columbia, 124 A.3d 69, 78 (D.C. 2015).[3]

However, after reviewing the records, it is not clear that redaction of names, contact information, and discrete identifying information of those mentioned in the records would be insufficient to protect relevant privacy interests. *Hall v. DOJ*, 552 F. Supp. 2d 23, 30 (D.D.C. 2008) (finding that DOJ failed to demonstrate that there is a real threat to employees' privacy, concluding that "DOJ merely asserts, in vague and conclusory fashion, that the redacted information relates to a small group of employees and that release of the redacted information will lead to identification and harassment"); *Citizens for Envtl. Quality v. USDA*, 602 F. Supp. 534, 538-39 (D.D.C. 1984) (ordering disclosure of health test results because identity of single agency employee tested could not, after deletion of his name, be ascertained from any information known outside appropriate part of agency (citing *Rose*, 425 U.S. at 380 n.19)).

We do not believe that appropriate redactions to these records should be so broad as to leave documents of no informational value. Many of the answers contained in the survey simply relay the survey takers' knowledge or feelings on certain topics, in a binary, non-narrative manner. This is dissimilar in kind to the demographical and chronological information which the Court of Appeals found could be used by a "curious and well-informed reader to eliminate all but one" individual. *FOP*, 124 A.3d at 78. It is unclear how such portions of the records at issue here could be used to identify an individual.

In addition to redacting names, addresses, and contact information, we believe that redacting answers to questions which reveal if the survey taker has children, receives specific government benefits, has a specific occupation, or which reveal specific medical information, would sufficiently prevent any survey taker from being identified.

Conclusion

Based on the foregoing, we remand this matter to DMPED with the directive to release redacted versions of the withheld records in accordance with this decision. This constitutes the final decision of this Office. You may file a separate appeal of DMPED's subsequent production.

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[3] *See also Alirez v. NLRB*, 676 F.2d 423, 428 (10th Cir. 1982), *McLeod v. Pena*, No. 94-1924, slip op. at 4 (D.D.C. Feb. 9, 1996).

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: Molly Hofsommer, FOIA Officer, DMPED (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-147

May 24, 2019

VIA ELECTRONIC MAIL

Mr. Wallace Mitchell

RE: FOIA Appeals 2019-147

Dear Mr. Mitchell:

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"), challenging the response the Department of Corrections ("DOC") provided to your request.

Background

On April 1, 2019, DOC received a request that you submitted for a "yellow 'post-it' sticker hanging in the unit Northwest-1 command module, DC Jail. . . ."

On April 15, 2019, DOC responded to your request by stating that it was unable to locate responsive records.

On May 13, 2019, this Office docketed your appeal. In your appeal, you state that you see the post-it note daily, and do not believe that DOC conducted a search. You appeal asks that DOC provide a copy of it to you.

This Office notified DOC of your appeal. On May 23, 2019, DOC responded.[1] DOC's response reiterated that it does not have the records you seek. DOC explained that a Correctional Supervisor conducted a search of the area identified in your request and did not find a yellow post-it note. DOC response goes on to argue that a post-it is not a "public record," citing to D.C. Official Code §§ 2-1701 (11), (13).

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

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[1] A copy of DOC's response is attached.

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 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).

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).

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). The 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).

DOC's response attached a declaration from a Correctional Supervisor, who claims that he conducted a search of the area identified in your request, and did not locate a post-it note. While your appeal notes that you see the post-it note daily, we must accept DOC's representations and find that it made a reasonable determination as to the locations of the records you requested and conducted an adequate search of these locations for responsive records.

We will note that the statutory definition of "public record" for the purposes of DC FOIA is located at D.C. Official Code § 2-502(18). The definition is significantly broader than D.C.

Official Code §§ 2-1701 (11), (13), which is cited to by DOC in its response to the appeal. The definition of "public record" for the purpose of DC FOIA includes "materials, regardless of physical form or characteristic prepared, owned, used, in the possession of, or retrained by a public body." D.C. Official Code § 2-502(18).[2]

Conclusion

Based on the foregoing, we affirm DOC'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: Oluwasegun Obebe, FOIA Officer, DOC (via email)

[2] As DOC has stated that it conducted a search of the area identified in your request and did not locate the post-it note, we need not address the question of whether the post-it note would be a public record.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-148

May 24, 2019

VIA ELECTRONIC MAIL

Ms. Valerie Jablow

RE: FOIA Appeals 2019-148

Dear Ms. Jablow:

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 the grounds that the Office of the Deputy Mayor for Education ("DME") has failed to provide records that you requested.

On January 24, 2019, you submitted a request to DME for communications between DME staff and persons affiliated with Howard University Middle School of Mathematics and Science. After not receiving any records responsive to your request, you filed an appeal with this Office. That appeal was docketed as FOIA Appeal 2019-101. On March 27, 2019, this Office remanded the matter to DME to begin providing you with non-exempt, responsive records.

On May 10, 2019, you submitted another appeal to this Office on the grounds that as of that date, you had still not received any records from DME. On May 13, 2019, before this Office had docketed the appeal, DME sent you a response, on which this Office was copied. DME's response indicated that it had concluded its search, but was currently reviewing and redacting responsive records. DME's response indicates that it has not yet completed its review.

DME's response to your request is delinquent and betrays a casual indifference to the response timeline set forth in DC FOIA. Having belatedly acknowledged that it has identified responsive records, DME is not free to respond when and as it sees fit. We remand this matter to DME a second time with the directive that DME should promptly complete the review of responsive records and provide to you all non-exempt portions on a rolling basis. DME should not further delay responding to your request by waiting until it has reviewed all records responsive to your January request before it begins disclosing records to you. Within 5 days of this decision, DME should release to you all non-exempt portions of responsive records that it has already reviewed and redacted. It should then diligently proceed to complete its review of the remaining responsive records, with timely release of the remaining records subject to production on a rolling basis and in good faith compliance with DME's statutory obligations under DC FOIA.

This constitutes the final decision of this Office. You are free to challenge any subsequent, substantive response(s) you receive from DME by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Gina Toppin, Chief of Staff, DME (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-149

May 21, 2019

VIA ELECTRONIC MAIL

Ms. Karen Feld

RE: FOIA Appeals 2019-149

Dear Ms. Feld:

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"), challenging the Office of Unified Communications' ("OUC") response to your request for records related to a 911 call.

Your appeal was received by this Office on May 16, 2019. Attached to your appeal was proof of your identity. This Office notified OUC and requested that it respond to your appeal. OUC provided its response, which indicated that OUC denied your initial request to protect the personal privacy of the 911 caller. However, on appeal you have attached documentation sufficient to address the privacy concerns initially raised by OUC. As a result, OUC has stated that it has made the requested records available to you.

Accordingly, since your appeal was based on OUC's withholding of requested public records, and the agency has subsequently provided the requested records, we consider your appeal to be moot and it is hereby dismissed. You are free to challenge OUC's records disclosure by 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. *See* D.C. Official Code § 2-537(a).

Sincerely,

Mayor's Office of Legal Counsel

cc: Ingrid Bucksell, FOIA Officer, 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: 2019-150

May 31, 2019

VIA ELECTRONIC MAIL

Mr. Benjamin Douglas

RE: FOIA Appeals 2019-150

Dear Mr. Douglas:

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") failure to respond to your request for records relating to the training of MPD officers in Israel.

You submitted a request to MPD which asked for five categories of records related to MPD personnel's activities in Israel. On May 16, 2019, you filed the instant appeal, challenging MPD's failure to respond to your request. This Office contacted MPD, to notify the agency of your appeal. On April 23, 2019, MPD sent this Office its response to your appeal.[1] In its response, MPD asserts that its search yielded over 13,000 pages of responsive records which it is currently processing and estimates will take at least two weeks to complete.

We accept MPD's representation that it is conducting a review. Nonetheless, we conclude based on the record before us that MPD's failure to timely produce records constitutes a constructive denial under DC FOIA. D.C. Official Code § 2-532(e). We therefore remand this matter to MPD to complete its review promptly and disclose to you any non-exempt, responsive records on a rolling basis rather than further delaying its response to your request by waiting until it has reviewed all records responsive to your request before it begins disclosing records to you.

This constitutes the final decision of this Office. You may challenge MPD's subsequent response(s) by 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 the DC FOIA.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

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[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: 2019-151

June 3, 2019

VIA ELECTRONIC MAIL

Ms. Vida Kordestani

RE: FOIA Appeals 2019-151

Dear Ms. Kordestani:

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 the grounds that the Metropolitan Police Department ("MPD") withheld records responsive to your April 9, 2019 request for records relating to your son. Specifically, MPD withheld videotape footage on the grounds that its release would constitute a clearly unwarranted invasion of personal privacy.

Your appeal was received by this Office on May 20, 2019. This Office notified MPD and requested that it respond by explaining the basis for its withholding of responsive records. On May 28, 2019, MPD responded and indicated that it had reconsidered its position and would make the records that you requested available to you. [1]

Since your appeal was based on MPD's withholding of records, and the agency has now represented that it will no longer withhold those records, we consider your appeal to be moot and hereby dismiss it. This constitutes the final decision of this Office. You are free to challenge MPD's substantive response by 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.

Sincerely,

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: 2019-152

June 12, 2019

VIA ELECTRONIC MAIL

Ms. Jessica Echeverry

RE: FOIA Appeals 2019-152

Dear Ms. Echeverry:

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 the grounds that the Metropolitan Police Department ("MPD") improperly closed your FOIA request.

You submitted two substantially similar requests to MPD for records relating to an accident that occurred on March 9, 2018. MPD closed one of these requests as duplicative. On January 23, 2019, MPD sent you an email which indicated MPD's fee estimate was between $40 and $80 for the search it would have to conduct to locate the records that you requested. MPD's email requested that you respond within five days by stating whether you were willing to pay the fees. MPD's email indicated that it was placing your request on hold pursuant to 1 DCMR § 405.6, and that if it did not receive a response within five business days, it would presume you were no longer interested in pursuing the request.

On May 22, 2019, this Office received your appeal, which states in its entirety: "There was no production of information[.] Further, there was no determination or explanation given as to why this could not be produced."

On May 28, 2019, MPD provided this Office with its response to your appeal.[1] In its response, MPD asserts that it advised you that the fee estimate was up to $80 to process. On appeal, MPD did not explain the basis of its calculation by providing the anticipated hours to be expended or the personnel level required. [2] MPD's response indicates that MPD will process your request if you indicate a willingness to pay the estimated search fee.

Discussion

We have concerns with MPD's communication regarding the fee issue. MPD is authorized to charge fees for a DC FOIA request consistent with 1 DCMR § 408. Under certain circumstances, MPD must notify you of anticipated costs of fees pursuant to § 408.2 and § 408.3. However,

[1] A copy of MPD's response is attached.

[2] It is unclear from MPD's communication how it calculated the fee estimate. However, consistent with the fee schedule found at 1 DCMR § 408.1, it appears that MPD's estimate was based on an assumption that locating the requested records would take supervisory personnel between 2 and 3 hours, including one free hour of searching.

there is no authority to support an agency rejecting a request because its fee estimate exceeded a requester's preapproved amount.[3]

The rules relating to what is required of a records request are found in 1 DCMR § 402.1. Once a request is made, an agency has a duty to issue a final decision regarding release of the requested public records pursuant to 1 DCMR § 407 unless the requester withdraws his or her request.[4] You did not withdraw your request. MPD is entitled to charge fees for the search it conducts and notify you of the amount incurred at the time it notifies you that records responsive to your request have been identified pursuant to 1 DCMR § 407.1.[5]

MPD's January 23, 2019 email suggested that your willingness to pay fees affected MPD's deadline to provide records. Twice MPD's email stated that it was placing your request on hold pursuant to 1 DCMR § 405.6. This was a misstatement of MPD's authority pursuant to 1 DCMR § 405.6. The provision in § 405.6 allows for a public body to place a request on hold while it communicates with the requester pursuant to 1 DCMR § 402.5 to clarify which records are being sought in a request. The scope of your records request was unambiguous, and included relevant names, dates, and location of an incident. A lack of clarity as to whether you are willing to pay a fee is not contemplated or covered by § 402.5. Your willingness to pay fees does not affect the time limitations an agency has in responding to a records request pursuant to 1 DCMR § 405.

Conclusion

Therefore, we remand this matter to MPD with the directive that it should promptly process your request, and release to you all non-exempt portions of responsive records along with an invoice for whatever fees MPD is entitled to assess.

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)

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[3] This Office has stated there is no authority for an agency to unilaterally close a request in this manner in FOIA Appeals 2019-50, 2018-153, and 2018-150. MPD's assertion that it may declare a request abandoned for the failure of the requester to commit to paying is belied by D.C. Official Code § 2-532(b-3) (providing an agency the remedy of demanding prepayment of searching fees for subsequent FOIA requests "when the requester has previously failed to pay fees in a timely fashion.").

[4] Indeed, it is unclear if MPD issued a final decision in this matter that stated your appeal rights as required by D.C. Official Code § 2-533(a)(3).

[5] We will note that the first hour of a search is free to the requester. *See* 1 DCMR 408.1. It is unclear if here MPD conducted the free hour of searching which you were entitled to before it unilaterally closed the matter.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-153

June 7, 2019

VIA ELECTRONIC MAIL

Mr. Martin Austermuhle

RE: FOIA Appeals 2019-153

Dear Mr. Austermuhle:

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 the grounds that the District of Columbia Public Schools ("DCPS") failed to respond to your request for records related to a "management alert."

This Office received your appeal on May 23, 2019. Your appeal alleges that DCPS had not met the 15-day deadline to provide you with responsive records. We notified DCPS of your appeal and requested an explanation of the agency's failure to respond to your request for public records. On May 30, 2019, DCPS responded and copied you, indicating responsive records were emailed to you May 24, 2019.

Your appeal was based on DCPS's failure to provide you with a response to your request for records, and the agency has now responded by providing you with copies of the requested records. We therefore consider your appeal to be moot, and it is dismissed.

This constitutes the final decision of this Office. You are free to challenge DCPS's substantive response by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Eboni Govan, FOIA Officer, DCPS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-154

June 12, 2019

VIA ELECTRONIC MAIL

Mr. Blaine Pardoe

RE: FOIA Appeals 2019-154

Dear Mr. Pardoe:

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") withholding of records you requested under DC FOIA.

Background

You submitted a request to MPD for records relating to search warrants from between 1977 and 1980 which relate to the "Freeway Phantom murder cases." On May 13, 2019, MPD denied your request in its entirety, citing to D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3(A)(i)") which allows for the withholding of investigatory records when the release of such records would interfere with an enforcement proceeding.

On appeal, you argue that release of the records that you requested would not jeopardize a potential prosecution. In support of this, you argue that the suspect related to the search warrants you requested died in 2010. Further, you argue that there is no active investigation and that "[p]rosecution is likely impossible after 49 years."

On May 31, 2019, MPD responded to your appeal in a letter to this Office.[1] In its response, MPD reaffirms that the investigation is still open. As a result, MPD's response reasserts that the responsive records may be withheld pursuant to Exemption 3(A)(i).

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

[1] MPD's response is attached for your reference.

. . ." *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).

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). "[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies." *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency's decision. *Id.*

The purpose of Exemption 3(A)(i) is to protect against releasing investigatory details that would interfere with law enforcement efforts. The fact that the crimes being investigated occurred in the 1970s does not invalidate Exemption 3's applicability. In 2005 a federal court found that the FBI's investigation of a 1971 hijacking was sufficient for the purposes of the federal FOIA's equivalent to Exemption 3. *Cook v. DOJ*, No. 04-2542, 2005 WL 2237615, at *2 (W.D. Wash. Sept. 13, 2005) (stressing that "mere fact that this crime remains unsolved . . . do[es] not establish, or even raise a genuine issue of material fact, regarding the pendency of this investigation").[2]

The records you seek here were compiled for the law enforcement purpose of investigating a series of murders, and MPD has asserted that the investigation is still ongoing. MPD has indicated that because the investigation is still ongoing, disclosing the requested records could reveal the direction of the matter to potential suspects or witnesses, which would have the effect

[2] *See Dickerson v. DOJ*, 992 F.2d 1426, 1432 (6th Cir. 1993) (finding that an investigation into 1975 disappearance remained ongoing and therefore was still "prospective" law enforcement proceeding.); *Antonelli v. U.S. Parole Comm'n*, No. 93-0109, slip op. at 3-4 (D.D.C. Feb. 23, 1996) (reiterating that courts repeatedly find "lengthy, delayed or even dormant investigations" covered by Exemption 7(A)); *Butler v. DOJ*, No. 86-2255, 1994 WL 55621, at *24 (D.D.C. Feb. 3, 1994) (stating that agency "leads" were not stale simply because they were several years old given that indictee remained at large), *appeal dismissed voluntarily*, No. 94-5078 (D.C. Cir. Sept. 8, 1994); *Afr. Fund v. Mosbacher*, No. 92-289, 1993 WL 183736, at *4 (S.D.N.Y. May 26, 1993) (finding that documents that would interfere with lengthy or delayed investigation fall within protective ambit of Exemption 7(A)).

of interfering with prospective enforcement proceedings. In light of the statutory purpose of Exemption 3(A)(i), we find that MPD is justified in withholding from disclosure the investigatory records you requested.

Conclusion

Based on the foregoing, we affirm 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.

Sincerely,

The 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: 2019-155

June 12, 2019

VIA ELECTRONIC MAIL

Mr. Martin Austermuhle

RE: FOIA Appeals 2019-155

Dear Mr. Austermuhle:

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 the grounds that the Executive Office of the Mayor ("EOM") failed to respond to your request for records related to communications made by the Mayor in the month of April.

This Office received your appeal on May 28, 2019. Your appeal alleges that EOM had not met the 15-day deadline to provide you with responsive records. We notified EOM of your appeal and requested an explanation of the agency's failure to respond to your request for public records. On June 4, 2019, EOM responded and indicated that EOM had provided a final response to you that day.[1]

Your appeal was based on EOM's failure to provide you with a response to your request for records, and the agency has now responded. We therefore consider your appeal to be moot, and it is dismissed. This constitutes the final decision of this Office. You are free to challenge EOM's substantive response by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Erika Satterlee, Associate Director, EOM (via email))

[1] EOM's response is attached for your reference.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-156 & 2019-157

June 20, 2019

VIA ELECTRONIC MAIL

Mr. Peter Spaulding

RE: FOIA Appeals 2019-156 & 2019-157

Dear Mr. Spaulding:

This letter responds to the administrative appeals you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), challenging the Office of the Chief Financial Officer's ("OCFO") responses to your requests for records relating to tax payments for a specified address.

Your appeals were docketed by this Office on May 30, 2019. Your appeals indicate that the OCFO's responses referenced an attached "redacted bank statement" that was not attached to the OCFO's responses. Additionally, your appeals argue that the withheld record could be redacted, instead of being withheld in its entirety.

In responding to this appeal, the OCFO clarified that the reference to a "redacted bank statement" was made in error. Additionally, the OCFO indicated to this Office that it identified a single additional record which is responsive to both of your requests and which has not yet been provided to you. This record relates to wire transfers, and an unredacted copy was provided to this Office for an *in camera* review. The OCFO has asserted that portions of the record may be redacted pursuant to D.C. Official Code § 2-534(a)(1). We agree that portions may be redacted.

Based on the foregoing, we remand these matters to the OCFO with the directive to promptly provide to you non-exempt portions of the withheld record. This constitutes the final decision of this Office. You are free to challenge the OCFO's subsequent response by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Tracye Peters, FOIA Officer, 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: 2019-158

June 12, 2019

VIA ELECTRONIC MAIL

DC Safe Healthy Playing Fields

RE: FOIA Appeals 2019-158

Dear DC Safe Healthy Playing Fields:

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 the grounds that the District of Columbia Public Schools ("DCPS") failed to respond to your request for records related to synthetic fields.

This Office received your appeal on May 29, 2019. Your appeal alleges that DCPS had not met the deadline to provide you with responsive records. We notified DCPS of your appeal and requested an explanation of the agency's failure to respond to your request for public records. On June 6, 2019, DCPS responded and copied you, indicating that responsive records were sent to you that day.

Your appeal was based on DCPS's failure to provide you with a response to your request for records, and the agency has now responded by providing you with copies of the requested records. We therefore consider your appeal to be moot, and it is dismissed.

This constitutes the final decision of this Office. You are free to challenge DCPS's substantive response by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Eboni Govan, FOIA Officer, DCPS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-159

June 17, 2019

VIA ELECTRONIC MAIL

Mr. Adam Marshall

RE: FOIA Appeals 2019-159

Dear Mr. Marshall:

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 the grounds that the Office of Unified Communications ("OUC") improperly denied your client's April 8, 2019 request for records related to "visits made by MPD, FEMS, or other first response team[s] to the households" of three named homicide victims.

Your appeal was received by this Office on May 31, 2019. This Office notified OUC and requested that it respond to your appeal. On June 6, 2019, OUC provided its response and therein indicated that its assertion of D.C. Official Code § 2-534(a)(2)("Exemption 2") was premature.[1]

Following your appeal, OUC recognized that the information provided by your client's request is insufficient for OUC to conduct a search. Your client's request primarily identifies the requested records by the names of the three homicide victims. OUC suggests that to the extent that it would possess responsive records, it would only be related to 911 calls and such records are not maintained in a way that tracks names.

Moreover, OUC maintains that if responsive records exist that OUC would be justified in withholding them pursuant to Exemption 2 – because third party requests for 911 calls implicate the privacy interests of the callers. Additionally, OUC suggests that the records your client is seeking may be in the possession of other agencies.

Your appeal was based on OUC's withholding of records pursuant to Exemption 2. OUC has now indicated that it is unable to locate records responsive to your client's request for records relating to three named individuals because it does not track 911 calls by name. OUC should have communicated with your client from the outset to clarify the scope of your client's request pursuant to 1 DCMR § 402.5 ("Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester shall be contacted and asked to supplement the

[1] A copy of OUC's response is attached.

request with the necessary information."). We cannot reach the merits of the Exemption 2 argument, because it is unclear what records, if any, are being withheld.

Therefore, we remand this matter to OUC to communicate with your client pursuant to § 402.5 and make "[e]very reasonable effort . . . to assist in the identification and location of requested records." OUC should conduct a search, once it is in receipt of a request that reasonably describes the records your client seeks pursuant to 1 DCMR § 402.4. OUC should then issue you a response letter that indicates the nature of existing responsive records, and assert any exemptions to justify withholding, pursuant to 1 DCMR § 407. You are free to challenge OUC's subsequent response by separate appeal to this Office.

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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Ingrid Bucksell, FOIA Officer, 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: 2019-160

June 18, 2019

VIA ELECTRONIC MAIL

Ms. Becky K B

RE: FOIA Appeals 2019-160

Dear Ms. K B:

This letter responds to the administrative appeal you have 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 are challenging the response provided by the Office of Contracting and Procurement ("OCP") to your request.

On March 28, 2018, you made a request for records to OCP for records relating to 11 procurements, which your request associated with 10 names. On May 2, 2018, OCP granted your request by providing you with 55 pages of documents, relating to 10 procurements. OCP did not redact or withhold records in this production.

Thirteen months later you filed this appeal, which was received on June 4, 2019. In your appeal you assert that the "information included in the download is incomplete." Your appeal alleges that you had not "received any of the bid tabulations from" a list of 18 contracting officers.[1]

This Office notified OCP of your appeal, and the agency provided a response on June 11, 2019.[2] OCP's response indicated that upon reviewing its records for this appeal that it identified 2 pages of records responsive to your request that through an oversight had not been previously provided to you. These pages relate to the 11th procurement identified by your original request. OCP has since sent to you a copy of those 2 pages as a supplemental response to your request.

Since your appeal was based on OCP's failure provide responsive records for all of the persons identified in your request, and the agency has now provided records for all of the persons identified in your request, we consider your appeal to be moot and hereby dismiss it.

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[1] Of the 18 names identified in your appeal, only 5 were listed in your original request. The scope of this appeal is limited to reviewing the response OCP made to the request that it received. *See* D.C. Official Code § 2-537(a). You may not broaden your request on appeal.
[2] OCP's response is attached for your reference.

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: D. Ryan Koslosky, Associate General Counsel, OCP (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2019-161

June 18, 2019

VIA ELECTRONIC MAIL

Mr. Arel Jennings

RE: FOIA Appeals 2019-161

Dear Mr. Jennings:

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 the grounds that the Metropolitan Police Department ("MPD") improperly denied request for records of personnel actions related to law enforcement officers that you have interacted with.

On April 15, 2019, MPD denied your request be asserting that responsive records may be withheld pursuant to D.C. Official Code § 2-534(a)(2)("Exemption 2") and D.C. Official Code § 2-534(a)(3). Your appeal was received by this Office on June 4, 2019. This Office notified MPD and requested that it respond to your appeal.

On June 11, 2019, MPD responded to the appeal.[1] MPD's response indicates that its assertion of Exemption 2 and Exemption 3 were premature, as MPD had not yet conducted a search. MPD's response advises that it has sent to you a request for additional information so that it may conduct a search.[2]

Your appeal was based on MPD's withholding of records pursuant to Exemptions 2 and 3. MPD has now indicated that it is unable to determine if records responsive to your request exist. We cannot reach the merits of the Exemption 2 or 3 arguments, because it is unclear what records, if any, are being withheld. Therefore, we remand this matter to MPD to continue to communicate with you pursuant to § 402.5 to make "[e]very reasonable effort . . . to assist in the identification and location of requested records." MPD should then conduct a search, once it is in receipt of a request that reasonably describes the records you are requesting.[3] MPD should

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[1] A copy of MPD's response is attached.

[2] *See* 1 DCMR § 402.5 ("Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester shall be contacted and asked to supplement the request with the necessary information.").

[3] *See* 1 DCMR § 402.4 ("A request shall reasonably describe the desired record(s).Where possible, specific information regarding names, places, events, subjects, dates, files, titles, file designation, or other identifying information shall be supplied").

then issue you a response letter that indicates the nature of existing responsive records, and assert any exemptions to justify withholding, pursuant to 1 DCMR § 407. You are free to challenge MPD's subsequent response by separate appeal to this Office.

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.

Sincerely,

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: 2019-162

June 19, 2019

VIA ELECTRONIC MAIL

Mr. Michael Perloff

RE: FOIA Appeals 2019-162

Dear Mr. Perloff:

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 the grounds that the Metropolitan Police Department ("MPD") failed to respond to your request for "all records reflecting the 'race or ethnicity of the person stopped,' which MPD collected pursuant to D.C. Code § 5-113.01(4B)(J) and/or General Order 304.10."

Your appeal was docketed by this Office on June 5, 2019. This Office notified MPD and requested that it respond to your appeal. On June 18, 2019, MPD indicated that it has identified 31,521 body-worn camera videos that it deems responsive to your request.[1] MPD has not cited to an exemption to justify the withholding of these records in their entirety.

You filed a request for records. As of the time when the statutory deadline lapsed, MPD had failed to provide the requested public records; nor had MPD provided you with a response justifying the withholding of records responsive to your request. MPD has constructively denied your request. *See* D.C. Official Code § 2-532(e).

As a result, we remand this matter to MPD with the directive that MPD promptly begin reviewing and redacting records it has identified as responsive, and produce to you non-exempt portions on a rolling basis, consistent with DC FOIA. This constitutes the final decision of this Office. You are free to challenge MPD's subsequent response(s) by 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

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[1] A copy of MPD's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-107
October 30, 2019

SUBJECT: Designation of Special Event Areas for Emancipation Day Celebration

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as the Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 792, Pub. L. 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. On Saturday, April 18, 2020, between the hours of 12:00 p.m. and 4:00 p.m., the following area is hereby designated as a special event area to be used as a parade route:

    a. The area on Pennsylvania Avenue, NW, between 9th and 14th Streets, NW.

2. On Saturday, April 18, 2020, between the hours of 5:00 a.m. and 5:00 p.m., the following area is hereby designated as a special event area to be used as a parade route staging area:

    a. The area of 10th Street, NW, between Pennsylvania Avenue and E Street, NW.

3. On Saturday, April 18, 2020, between the hours of 4:00 a.m. and 12:00 a.m. on the following Sunday, April 19, 2020, the following areas are hereby designated as a special event area to be used as staging areas:

    a. The area on Pennsylvania Avenue, NW, between 11th and 14th Streets;

    b. E Street, NW, between 13th and 14th Streets, NW;

    c. The north and south curb lanes of E Street, NW, between 12th and 13th Streets, NW;

    d. The east and west curb lanes of 13th Street, NW, between E and F Streets, NW;

    e. 13th Street, NW, between E Street and Pennsylvania Avenue, NW;

    f. 12th Street NW, between E Street and Pennsylvania Avenue, NW;

    g. The east curb lane of 14th Street, NW, between E Street and Pennsylvania Avenue, NW;

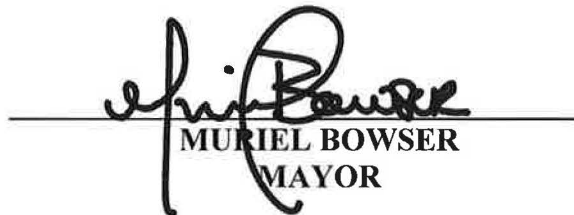
h. The north curb lane of Pennsylvania Avenue, NW, between 14th and 15th Streets, NW; and

i. The east curb lane of 14th Street, NW, between E and F Streets, NW.

4. The Government of the District of Columbia - Executive Office of the Mayor is authorized to operate the parade route and staging areas designated by this Order and to conduct necessary and appropriate activities in aid of the parade route and the staging areas for the 158th Anniversary of President Lincoln's signing of the District of Columbia Compensated Emancipation Act.

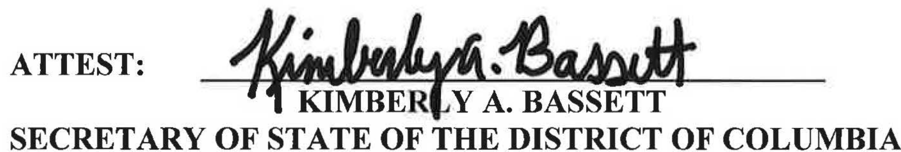
5. This Order is an authorization for the closure of the designated streets only. The operating entities shall secure and maintain all other licenses and permits applicable to the activities associated with the operation of the event on the designated streets. All building, health, life safety, and use of public space requirements shall remain applicable to the special event areas designated by this Order.

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



MURIEL BOWSER
MAYOR

ATTEST:



KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-108
October 30, 2019

SUBJECT: Reappointment and Appointments — Concealed Pistol Licensing Review Board

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 section 908 of the Firearms Control Regulations Act of 1975, effective June 16, 2015, D.C. Law 20-279; D.C. Official Code § 7-2509.08 (2018 Repl.), it is hereby **ORDERED** that:

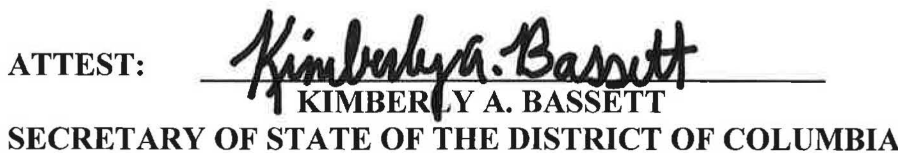
1. **ALFREDO PHOENIX** is appointed as a District resident with experience in the operation, care, and handling of firearms member of the Concealed Pistol Licensing Review Board, for a term to end November 21, 2023.

2. **EDWIN POWELL** is appointed as a mental health professional member of the Concealed Pistol Licensing Review Board, for a term to end November 21, 2023.

3. **BONNIE LOPER** is reappointed as a District resident with experience in the operation, care, and handling of firearms member of the Concealed Pistol Licensing Review Board, for a term to end November 21, 2023.

MURIEL BOWSER
MAYOR

ATTEST:



KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-109
October 30, 2019

SUBJECT: Appointment — Public Charter School Credit Enhancement Committee

ORIGINATING AGENCY: Executive 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 Mayor's Order 2016-037, dated March 10, 2016, it is hereby **ORDERED** that:

1. **YAIR INSPEKTOR** is appointed as a member of the Public Charter School Credit Enhancement Committee, replacing Cedric Bobo, for a term to end May 24, 2022.

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

MURIEL BOWSER
MAYOR

ATTEST:

KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-110
October 30, 2019

SUBJECT: Appointments — District of Columbia State Rehabilitation 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 2001-173, dated November 30, 2001, it is hereby **ORDERED** that:

1. **ABRAHAM HIATT** is appointed as a representative of a client assistance program member of the District of Columbia State Rehabilitation Council ("**Council**"), replacing Margaret Cowley, for a term to end January 16, 2020.

2. **YOLANDRA PLUMMER** is appointed as a representative of business, industry, and labor member of the Council, replacing Kesha Pendergrast, for a term to end November 17, 2021.

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

MURIEL BOWSER
MAYOR

ATTEST:

KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-111
October 31, 2019

SUBJECT: Appointments — Domestic Violence Fatality Review Board

ORIGINATING AGENCY: Office of the Mayor

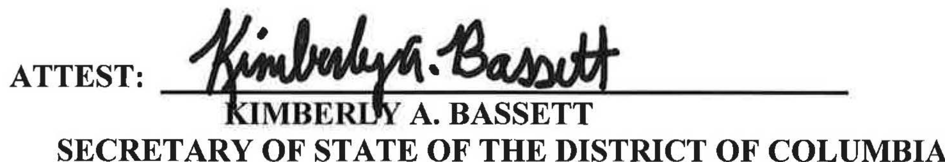
By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and pursuant to section 2 of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act of 2002, effective April 11, 2003, D.C. Law 14-296; D.C. Official Code § 16-1053 (2012 Repl.), it is hereby **ORDERED** that:

1. **CHERYL BOZARTH**, is appointed as a representative from the Office of Victim Services and Justice Grants, to serve at the pleasure of the Mayor.

2. **DAWN DALTON**, is appointed as a representative from the DC Coalition Against Domestic Violence, to serve at the pleasure of the Mayor.

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

MURIEL BOWSER
MAYOR

ATTEST: 

KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-112
November 1, 2019

SUBJECT: Designation of Special Event Areas for 2019 World Series Champion Washington Nationals' Parade

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as the Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 792, Pub. L. 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. This Order applies to certain special event activities associated with the 2019 World Series Champion Washington Nationals' Parade.

2. Between Friday, November 1, 2019 from 9:30 a.m. until 7:00 p.m. on Saturday, November 2, 2019, the day of the parade, the following area is hereby designated as a special event area to be used as a parade route and staging areas:

   a. Pennsylvania Avenue, NW between Constitution Avenue, NW and 3rd Street, NW.

3. On Friday, November 1, 2019, from 8:00 p.m. until 7:00 p.m., on Saturday, November 2, 2019, the day of the parade, the following areas are hereby designated as a special event area to be used as a parade route and staging areas:

   a. 15th Street between Constitution Avenue & E Street, NW;
   b. Constitution Avenue between 3rd Street & 6th Street, NW;
   c. Pennsylvania Avenue between East crossover & 6th Street, NW;
   d. Pennsylvania Avenue between 14th Street & 15th Street, NW; and
   e. 3rd Street between Constitution Avenue & Madison Drive, NW.

4. On Saturday, November 2, 2019, from 9:00 a.m. until 6:00 p.m., the following areas are hereby designated as a special event area to be used as a parade route and staging areas:

   a. Constitution Avenue between 17th Street, NW & 3rd Street, NW;
   b. Pennsylvania Avenue between 15th Street, NW & 3rd Street, NW;
   c. 15th Street between New York Avenue, NW & Independence Avenue, SW;
   d. 14th Street between New York Avenue, NW & Independence Avenue, SW;
   e. 13th Street between H Street, NW & Pennsylvania Avenue, NW;
   f. 12th Street between E Street, NW & Constitution Avenue, NW;
   g. 11th Street between E Street, NW & Pennsylvania Avenue, NW;

h. 10th Street between E Street, NW & Constitution Avenue, NW;
i. 9th Street between E Street, NW & Constitution Avenue, NW, to include the 9th Street Tunnel;
j. 7th Street between E Street, NW & Independence Avenue, SW;
k. 6th Street between Indiana Avenue, NW & Constitution Avenue, NW;
l. 4th Street between Pennsylvania Avenue, NW & Independence Avenue, SW;
m. 3rd Street between Constitution Avenue, NW & Independence Avenue, SW;
n. Maryland Avenue between 3rd Street, SW & Independence Avenue, SW;
o. Inbound 12th ramp from Virginia;
p. 12th Street ramp from Independence Avenue, SW;
q. Inbound 14th Street Bridge;
r. Inbound 14th Street HOV; and the
s. Westbound 395 exit to 12th Street Tunnel.

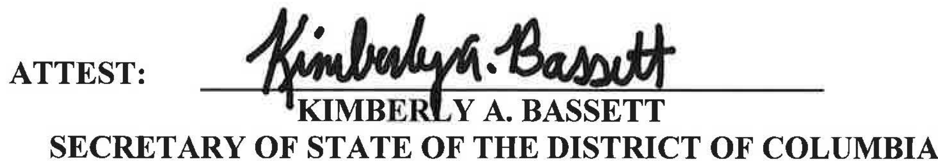
5. The Government of the District of Columbia - Executive Office of the Mayor is authorized to operate the special event area designed by this Order to conduct necessary and appropriate activities in aid of the parade route and staging areas for the Victory Parade for the Washington Capitals.

6. This Order is an authorization for the closure of the designated streets only. The operating entity, Washington Nationals, shall secure and maintain all other licenses and permits applicable to the activities associated with the operation of the event on the designated streets. All building, health, life safety, and use of public space requirements shall remain applicable to the special event areas designated by this Order.

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

MURIEL BOWSER
MAYOR

ATTEST:



KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

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