

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-080**

July 16, 2020

VIA ELECTRONIC MAIL

Ms. Jamie Davis Smith

RE: FOIA Appeal 2020-080

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. Code § 2-537 (“DC FOIA”), challenging the failure of the District of Columbia Public Schools (“DCPS”) to grant you a waiver of fees for your request for documents discussing your children.

DCPS initially decided not to grant you a fee waiver for your FOIA request. On January 23, 2020, you appealed that decision to this Office. Based on the emails provided to this Office, on January 24, 2020, you withdrew the appeal because DCPS had agreed to reconsider its decision. This reconsideration decision was based on your statement that the documents you requested for your own benefit as a parent would also be used for articles in media publications. You indicated that you are a freelance journalist and a parent and that is why you filed the request as a private individual. On January 23, 2020, DCPS again denied your request for a fee waiver. That decision was based on the fact that emails concerning minor children, many of which may ultimately be withheld from release under applicable exemptions, do not fit the definition of information that would benefit the general public pursuant to D.C. Code § 2-532(b). In response to this decision, you reinstated your appeal.

We note that D.C. Code § 2-532(b) states that “[d]ocuments may be furnished without charge or at a reduced charge where a public body determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.” (emphasis added). The foregoing provision does not mandate that the fees be waived. Rather, the agency is given the discretion to waive fees if the agency determines that the waiver is in the public interest. Here, the request filed in your designation as a private individual sought records relating to your children. Given the primary reason for the records request on your own behalf, the possible literary use of the records at some point in the future does not require the agency to conclude that your records request primarily benefits the general public. Therefore, the agency was not required to grant a fee waiver to you.

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 in the Superior Court of the District of Columbia in accordance with D.C. Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: Eboni Govan, Attorney-Advisor/FOIA Officer
DCPS (via email)