

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2020-137**

September 2, 2020

VIA ELECTRONIC MAIL

Ms. Tiffany Montgomery

RE: FOIA Appeal 2020-137

Dear Ms. Montgomery:

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 what you claim is a constructive denial of your FOIA requests by the Office of Open Government within the Board of Ethics and Government Accountability (“BEGA”). In particular, you assert that BEGA has not timely responded to your requests and that BEGA is improperly requesting advance payment of search fees. Those requests generally seek documents related to BEGA’s e-filing vendor and an Open Meetings Act complaint you filed against the Board of Veterinary Medicine.

In response, BEGA explains that it has not constructively denied your request by failing to respond within the statutorily prescribed timeframe because it exercised its right to a 10-day extension.<sup>1</sup> BEGA also explains that it properly asked you to make an advance payment of fees for your request, both because you have an outstanding balance due for an earlier request and because the search costs for your current requests are estimated to exceed \$250.

On the first point, we agree with BEGA that there has been no constructive denial and hold that your appeal is premature. As an initial matter, you appealed on March 4, which was prior to BEGA’s original deadline to respond to your request. Furthermore, under D.C. Code § 2-532(d)(1), an agency is entitled to a 10-day extension of time to respond to a FOIA request in unusual circumstances, such as when there is “need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.” D.C. Code § 2-532(d)(2)(A). BEGA properly invoked this extension for your request, which placed its deadline to respond at March 20, 2020. Because BEGA was still within its statutory timeframe to respond to your request when you filed your appeal, your request had not been constructively denied.

Although the deadline for BEGA to respond to your requests had not yet passed when you filed this appeal, we note for clarity that BEGA may require that you pay processing fees in advance. D.C. Code § 2-532(b-3) states that “[n]o agency or public body may require advance payment of

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<sup>1</sup> A copy of BEGA’s response to your appeal is attached to this decision.

any fee unless the requestor has previously failed to pay the fee in a timely fashion, or the agency or public body has determined that the fee will exceed \$250.” DC FOIA thus authorizes BEGA to insist on an advance payment for the authorized costs for production in these two FOIA matters, which it estimates will exceed \$250. Moreover, as BEGA notes, you have failed to pay \$134.50 in fees for records requested in matter 2019-FOIA-0793. You have also not offered any basis on which fees should be waived. As a result, BEGA is authorized require advance payment of fees.

For the foregoing reasons, we hereby dismiss your appeal. This is the final decision of this Office in response to your 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 D.C. Official Code § 2-537.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Rashee Raj, General Counsel  
BEGA (via email)