

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-236**

February 7, 2022

VIA ELECTRONIC MAIL

Mr. Kirby R. Vining

RE: FOIA Appeal 2020-236

Dear Mr. Vining:

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 Executive Office of the Mayor (“EOM”) to respond to your DC FOIA request.

Background

On July 29, 2020, you submitted a DC FOIA request to EOM requesting the names of persons who submitted applications for positions on the Historic Preservation Review Board (HPRB) over a two-year period, as well as the dates of those submissions. You filed an appeal with this Office on September 4, 2020, stating that EOM failed to respond to your FOIA request within the period of time required by statute.

EOM responded to your appeal on September 8, 2020 and stated that the office would continue to process your request within the extended public record disclosure periods set by Mayor’s Orders and D.C. Council legislation related to the COVID-19 public health emergency.¹

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. 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. 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. Code § 2-534. Under DC FOIA, an agency is required to disclose materials if they are “retained by a public body.” D.C. Code § 2-502(18).

¹ A copy of the agency’s response to your appeal is attached to this letter.

An agency in receipt of a DC FOIA request “reasonably describing any public record” must

either make the record accessible or provide the requester with its reasons for withholding the record “within 15 days (except Saturdays, Sundays, days of a COVID-19 closure, and legal public holidays)”. D.C. Code § 2-532(c)(1). A “COVID-19” closure is defined as “a period of time for which the Mayor has declared a public health emergency” D.C. Code § 2-539(c)(1). Mayor’s Order 2020-103 extended the public health emergency through December 31, 2020. For this reason, we conclude that EOM did not exceed the deadline for responding to your DC FOIA request and therefore deny this 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 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: Cristina Sacco, Associate General Counsel
Executive Office of the Mayor (via Email)