

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2021-115**

July 8, 2022

**VIA ELECTRONIC MAIL**

Ms. Tiffany Montgomery

RE: FOIA Appeal 2021-115

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”). In your appeal, you assert that the D.C. Office of Human Rights (“OHR”) improperly denied your request.

**Background**

You submitted a request to OHR seeking the following:

- (1) All OHR complaints made by members of the public against the DC Board of Ethics and Government Accountability (BEGA) alleging discrimination, government misconduct, dishonesty, or malfeasance of any sorts committed by BEGA staff or management from January 2017 to present.
- (2) All OHR complaints made by DC government employees against the DC Board of Ethics and Government Accountability (BEGA) alleging discrimination, government misconduct, dishonesty, or malfeasance of any sorts committed by BEGA staff or management from January 2017 to present.
- (3) All OHR complaints made by former BEGA employees members of the public against the agency (BEGA) alleging discrimination, government misconduct, dishonesty, or malfeasance of any sorts committed by BEGA staff or management from January 2017 to present.

OHR responded to your request neither confirming nor denying the existence of responsive records. To the extent records exist, OHR denied your request pursuant to the exemption found at D.C. Code § 2-534(a)(6) (“Exemption 6”), the exemption found at D.C. Code §§ 2-534(a)(3)(A)(i)-(ii), and the exemption found at D.C. Code § 2-534(a)(3)(C)).

You appealed to this Office arguing among other things, “[t]he blatant misconduct and dishonesty of BEGA's directors and employees should be grounds for ORH [sic] releasing the records, at least in part by redacting the names of parties.” You also asserted that “[i]t is in the interest of the public for it to be made aware of the misconduct at BEGA due to the

perpetual unlawful conduct at BEGA and failure of DC Council to adequately oversee its performance.”

In response to your appeal, OHR reiterated that it properly withheld records to the extent that they exist.<sup>1</sup> The agency explained three reasons for its withholding:

First, pursuant to D.C. Code § 2-534(a)(6) (records exempt from disclosure due to statute), OHR cannot disclose information where it is prohibited by statute from doing so. The District of Columbia Human Rights Act (DCHRA) mandates that complaints filed with the Office of Human Rights (OHR) are to be confidential and “the entities of persons and properties contained in reports submitted to the Office . . . shall not be made public.” D.C. Code § 2-1402.52(c); *see also* D.C. Code §§ 2-1401.02(16) (“Make public means disclosure to the public or to the news media of any personal or business data obtained during the course of an investigation of a complaint . . . [but does not] include access to such data by [Office of Commission] staff or . . . parties to a proceeding.”)...

Second, pursuant to the FOIA exemption found at D.C. Code §§ 2-534(a)(3)(A)(i)-(ii) (investigatory records compiled for law-enforcement purposes are exempt from disclosure), OHR investigations are exempt, because they are investigations of municipal matters (D.C. Code § 2-1403.01(a)), and the Director has determined that disclosing the identity of the parties would undermine the integrity of OHR’s investigations (D.C. Code § 2-1403.01(g)(2)(A)) as well as the provisions of OHR’s work-share relationships with federal agencies (D.C. Code § 2-1403.01(g)(2)(B)). *See, e.g.*, 29 CFR 1601.22 (investigative information related to cases cross-filed with the Equal Employment Opportunity Commission are not to be disclosed to the public).

Third, disclosure of information related to cases at the probable cause stage would also constitute an undue violation of privacy for the parties (FOIA exemption found at D.C. Code § 2-534(a)(3)(C)) and interfere with OHR’s ability to resolve complaints of discrimination through confidential mediations or otherwise substantially impair the ability of a particular Complainant or Respondent to receive an impartial probable cause determination (FOIA exemption found at D.C. Code § 2-534(a)(3)(B)).

## 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).

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

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).

### *Exemption 6*

Exemption 6 protects from disclosure “Information specifically exempted from disclosure by statute (other than [DC FOIA]), 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.” D.C. Official Code § 2-534 (a)(6). D.C. Official Code § 2-1402.52(c) provides, in pertinent part, “the entities of persons and properties contained in reports submitted to the Office . . . shall not be made public.” In this instance, we agree with OHR that the statute prohibits disclosure of any complaints that may exist. Because your request is for complaints against a specific entity, even if complainant names are redacted, releasing any complaints will necessarily reveal “the entities of persons and properties contained in reports submitted to [OHR].” Having found that the withholding of responsive records, if they exist, is proper under Exemption 6, we need not address whether the information is also protected under the other exemptions.

### Conclusion

Based on the foregoing, we affirm OHR’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: Charles Abbott, Interim FOIA Officer, OHR (via email)  
Alexis Applegate, FOIA Officer, OHR (via email)