SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

FRATERNAL ORDER OF POLICE,	)
	)
Plaintiff,	)
	)
v.	)
	) Civil Action No. 2005 CA 007011
DISTRICT OF COLUMBIA,	) Judge Lynn Leibovitz
	) Calendar 11
Defendant.	)
_____	)

ORDER

This matter is before the court on Plaintiff's Motion for Attorneys' Fees and Costs Under the District of Columbia Freedom of Information Act, defendant's opposition, plaintiff's reply, plaintiff's December 18, 2008, Submission to the Court, defendant's opposition, and plaintiff's reply. For the foregoing reasons, the court will grant in part and deny in part plaintiff's motion.

Procedural History

This case arises out of the plaintiff's Complaint under the District of Columbia Freedom of Information Act (FOIA), D.C. Code § 2-531 et. seq. In its Complaint, plaintiff Fraternal Order of Police ("FOP") alleged violations of the District of Columbia Freedom of Information Act ("FOIA") by the Metropolitan Police Department ("MPD"). Specifically, FOP alleged that MPD failed to satisfy the requirements of FOIA with respect to five FOIA requests for information made in 2004. FOP's claims regarding the first FOIA request were dismissed on summary judgment by the Honorable Natalia M.

Combs-Greene.[1] The remaining four requests were for records relating to "Disciplinary" and "Corrective" actions and Equal Employment Opportunity ("EEO") investigations administratively brought by MPD over a five-year period between 1999 and 2004. FOP claimed that MPD improperly denied these four FOIA requests, dated September 7, 2004, October 14, 2004, October 29, 2004, and November 5, 2004. MPD claimed it satisfied the requests and that, alternatively, the requests were for privileged information and that they were so burdensome that FOIA did not require disclosure of the requested information. Hereafter, the court will refer to the September 7, 2004, October 14, 2004, October 29, 2004, and November 5, 2004, FOIA requests as "Requests No. 1-4," respectively.

In the instant motion, plaintiff seeks attorney fees and costs totaling $67,594.03. Defendant opposes, arguing that the requested fees are unreasonable and unwarranted and, therefore, should be reduced.

Analysis

Plaintiff seeks an award of $67,594.03 in attorney fees and costs pursuant to the District of Columbia Freedom of Information Act ("DC FOIA"), D.C. Code § 2-537(c). The DC FOIA provides that "[i]f a person seeking the right to inspect or to receive a copy of a public record prevails in whole or in part in [their lawsuit], he or she may be awarded attorney fees and other costs of litigation." Id. "To be deemed a 'prevailing party,' it is necessary only that the plaintiff 'succeed on any *significant* issue in litigation which achieves *some of the benefit* the parties sought in bringing the suit." Fleming v. Carroll

[1] Request No. 1 sought information pursuant to Article 10 of the Collective Bargaining Agreement for uniformed officers. On October 17, 2007, summary judgment was entered by Judge Combs-Greene against the FOP because the claim was not a FOIA request.

Publ'g Co., 621 A.2d 829, 837 n.14 (D.C. 1993) ("Fleming II") (citations omitted) (emphasis in original).

The reasonableness of attorney fees is generally determined according to the "lodestar method" – the number of hours reasonably expended multiplied by a reasonable hourly rate. The lodestar fee "may then be adjusted up or down to reflect the quality of representation and contingent nature of success." Ungar v. District of Columbia Rental Housing Comm'n, 535 A.2d 887, 892 (D.C. 1987) (internal citations and quotations omitted); District of Columbia v. Hunt, 525 A.2d 1015, 1016 (D.C. 1987); see also Hensley, 461 U.S. at 434 ("This factor is particularly crucial where a plaintiff is deemed 'prevailing' even though he succeeded on only some of his claims for relief."). "[I]n such cases where a party is only partially successful, the trial court must exercise its discretion to determine what amount of fees, if any, should be awarded." Fleming v. Carroll Publ'g Co., 581 A.2d 1219, 1229 (D.C. 1990) ("Fleming I") (citing Hensley v. Eckerhart, 461 U.S. 424, 436-37 (1983)); see also Air Transp. Ass'n of Can. v. FAA, 156 F.3d 1329, 1335 (D.C. Cir. 1998) (holding that a litigant "who is unsuccessful at a stage of litigation that was a necessary step to her ultimate victory is entitled to attorney's fees even for the unsuccessful stage…").

The determination of the reasonableness of a request for attorney fees is "committed to the informed discretion of the trial court." Lively, 930 A.2d 984, 993 (D.C. 2007). In adjusting a request for fees, the court "may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success." Id. (quoting Hensley, 461 U.S. at 436-37). Where there is a voluminous fee application, the court "has the authority to make across-the-board

percentage cuts…" Id. (citations omitted). However, the Court of Appeals has rejected "a mathematical approach comparing the total number of issues in the case with those actually prevailed upon" in making such a calculation. Id. at 992 (quoting Hensley, 461 U.S. at 435 n.11).

The Court begins with the conclusion that plaintiff is a prevailing party. Judgment was entered in plaintiff's favor as to Requests No. 2 and 3. In securing this judgment, the court finds that plaintiff succeeded on a significant issue in the litigation and thereby achieved a benefit. Defendant argues, nonetheless, that the court should reduce the fees and costs associated with plaintiff's unsuccessful Requests No. 1 and 4 and the request dismissed on summary judgment, deemed by the court not to be a FOIA request. Defendant recommends a corresponding sixty percent reduction in claimed fees and costs. Defendant also argues for a reduction in fees based on plaintiff's unsuccessful motions and filings and inadequate billing entries.

The Court concludes that a reduction of plaintiff's claimed fees and costs for Requests No. 1 and 4 would be inappropriate here. These two requests were made in the same time period as Requests No. 2 and 3. The four requests arise from the same nucleus of facts and FOP made Requests No. 1 and 4 for the same purposes, to the same officials, and under the same legal theories as it did in pursuing Requests No. 2 and 3, the successful claims. Plaintiff was required to discover and prove the same facts and advance the same legal theories. The United States Supreme Court has recognized that, when claims "involve a common core of facts," an attorney's time often "will be devoted generally to the litigation as a whole." Hensley, 461 U.S. at 435. Here, the court concludes, the work done in service of the unsuccessful claims regarding Requests 1 and

4 was also devoted to the litigation as whole. Thus, the Court will not reduce plaintiff's request for fees on this basis.

Likewise, the court concludes that it would be inappropriate to reduce plaintiff's fee request based on unsuccessful motions and filings. Plaintiff's "fee award should not be reduced simply because [they] failed to prevail on every contention raised in the lawsuit." Hensley, 461 U.S. at 435. The motions and filings identified by the defendant were reasonable and necessary steps in the litigation. Thus, a reduction in fees on this basis is not warranted.

However, the court concludes that it is appropriate to reduce plaintiff's requested fees based on its claim for relief under FOIA for a request for records pursuant to the Collective Bargaining Agreement. This claim was dismissed on summary judgment because it was not based the DC FOIA at all. Thus, it involved a distinct and separate set of facts and legal issues from the requests on which plaintiff ultimately prevailed. Moreover, the fundamental inadequacies of the claim should have been apparent to plaintiff at the time the Complaint was filed. Plaintiff claims $4,963.50 in fees resulting from litigation of the motion for summary judgment regarding the request for information pursuant to the Collective Bargaining Agreement. Upon review of the submissions by the parties and the entire record herein, the court concludes that the entire $4,963.50 should be deducted from the fees and costs awarded in this case.

Further, the court concludes that it should reduce the plaintiff's fee award for billing entries that lack adequate detail. "Where the documentation of hours is inadequate the court may reduce the award accordingly." Hensley, 461 U.S. at 434. Here, defendant has correctly identified $247 in fees on May 17, 2006 and May 18, 2006

that are not adequately accounted for by the plaintiff. Thus, the court will not compensate plaintiff for these fees.

Finally, the court concludes that the plaintiff's request for fees for work performed since the trial is not reasonable because the attorney time spent was both unreasonably employed and unnecessary. Plaintiff seeks fees and costs totaling $18,495.28 for post-trial matters. After the court orally entered its Findings of Fact and Conclusions of Law as to liability on April 4, 2008, the parties were directed to provide estimates of the cost-per-page to be born by plaintiff for documents produced to FOP, and a reasonable proposed schedule for production of the documents by MPD. Neither party sufficiently complied with the court's order in this regard, such that the court has held numerous unnecessary status hearings to resolve these matters, with insufficient input from either party. FOP's failures in this regard have resulted from an apparent preference for complaining about defendant's responses, rather than providing its own proposals to the court. This has resulted in unnecessary delay and many unnecessary court proceedings in resolving this matter.

For example, after numerous status hearings and numerous requests by the court for estimates of the per-page cost of production, FOP submitted no estimate at all. Instead, FOP filed numerous pleadings complaining about the errors in MPD's estimates. Ultimately, the court determined from certain MPD records – without any input from FOP – that MPD imposes a standard $.25 per-page charge for FOIA production and ordered that production would be made at that cost to FOP. When the court ordered the parties to provide a proposal for the timing of production of the documents, MPD submitted estimates of the number of records to be copied and the staff time the effort

would take. FOP complained repeatedly about MPD's proposed timetable and its estimates of the number of records to be produced, but presented no reasonable, alternative proposal or estimates, although the court invited FOP to do so repeatedly. The record of the trial and the available exhibits provided ample basis upon which FOP could have reconstructed a sample file or otherwise proffered a reasonable method for calculating the time it would take MPD to copy and produce records. Ultimately the court has extrapolated its own timetable for production. The court concludes that, for six status hearings following the trial, attorney time to prepare and participate in court proceedings warrants payment of $1000, per hearing, or $6,000 in fees and costs for the post-trial period. The court concludes that the remainder of the fees and costs requested for the post-trial period are unreasonable and should not be awarded.

For all of these reasons, the court concludes that plaintiff is entitled to $49,888.25, representing its reasonable attorneys' fees and costs in this matter. Accordingly, it is this 3d day of February, 2009,

ORDERED that the Plaintiff's Motion for Attorneys' Fees and Costs Under the District of Columbia Freedom of Information Act is **GRANTED IN PART** and **DENIED IN PART**; it further is

ORDERED that the defendant District of Columbia shall pay the plaintiff $49,888.25 in attorney fees and costs.

Lynn Leibovitz
Associate Judge
(signed in chambers)

Copies to:

Anthony Conti
Paul Fenn
Conti, Fenn & Lawrence, LLC
36 South Charles Street
Suite 2501
Baltimore, MD 21201

Lucy Pittman
Assistant Attorney General
Office of the DC Attorney General
441 4th Street, NW
6th Floor South
Washington, DC 20001