



A Guide to Using the District of Columbia Freedom of Information Act*

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I. Introduction

Our democratic system of governance rests on the idea that we can hold our government accountable. We elect our leaders based on their promises and vote those officials out of office when they do not govern as we wish. Moreover, our democracy was designed to encourage public debate on important issues. However, we cannot hold our leaders accountable, and thus exercise our democratic rights effectively, if we do not know what the government is doing. As we have seen over the years, the government often has had the incentive to hide its mistakes and transgressions, or to keep controversial topics from public scrutiny.

Additionally, governments do not operate responsively without informed public involvement, and much of the information needed to inform the public is held by government. And that information, as well as the officials carrying out the work of government, is paid for with taxpayer dollars.

The purpose of the federal Freedom of Information Act and the many state open government laws that complement it is to ensure the public's right to access government-held information. These laws' objective is that all but a few narrow categories of records be made public upon request. By requiring the workings of government to be transparent, open government laws promote a more honest and true democracy.

The District of Columbia Freedom of Information Act (D.C. FOIA) was enacted in 1973, just seven years after its federal counterpart. It was designed to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny."¹ The Act gives any person the right, upon request, to inspect records held by "public bodies," a term that includes D.C. government executive agencies, independent agencies (other governmental entities), and the D.C. Council. The right of access to those records, known as "public records" under the Act, is subject only to limited exemptions. The D.C. FOIA also requires the government to make available certain information without a request.

This powerful law "embodies a strong policy favoring disclosure of information about governmental affairs and the acts of public officials."² Accordingly, "exemptions are

¹ *Washington Post Co. v. Minority Business Opportunity Comm'n*, 560 A.2d 517, 521 (D.C. 1989) (quoting *Department of Air Force v. Rose*, 425 U.S. 352, 361 (1976)).

² *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987).

to be narrowly construed, with ambiguities resolved in favor of disclosure.”³ The burden of proving that an exemption applies falls on the government.⁴

The D.C. FOIA has been used by journalists, researchers, businesses, and community members to inform the public about the operations of the District’s government and to participate more fully in the democratic process. This law can be a tool to uncover government wrongdoing, to shed light on pressing social problems, to educate those affected by government decisions, and to craft campaigns for political change. As such, its power is in its use and this guide is intended to assist the public in using the D.C. FOIA effectively.

II. Background Research

There is no central office in the District of Columbia government from which you can request information. Thus, if you are looking for D.C. government documents, you should first identify those agencies or offices that might have the information you seek. The D.C. government website has a list of all D.C. agencies and programs, with links to those agencies’ own [websites](#).

Moreover, the documents you want may already be readily available. The D.C. FOIA requires the government to make certain categories of information available to the public without requiring a formal request. D.C. Code § 2-536(a). Records that fall under this provision and were created after November 1, 2001 must also be available on the Internet or, if the public body does not have its own website, in other electronic format. D.C. Code § 2-536(b). Most D.C. government agencies also have public information officers (“PIOs”) who may be able to provide you with some or all of the records or information that you are seeking without the need for a formal request.

The categories of information that must affirmatively be made public include:

- the names, salaries, title, and dates of employment of all employees and officers of a public body;
- administrative staff manuals and instructions to staff that affect a member of the public;
- final opinions made in the adjudication of cases;
- statements of policy and interpretations of policy, acts, and rules that have been adopted by a public body;
- correspondence and materials referred to in correspondence with a public body relating to any regulatory, supervisory, or enforcement responsibilities of the public body;

³ *Washington Post Co. v. Minority Business Opportunity Comm’n*, 560 A.2d at 521.

⁴ *Id.*

- information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public funds;
- budget requests, submissions, and reports available electronically that agencies, boards, and commissions transmit to the Office of the Budget and Planning during the budget development process;
- the minutes of all public body proceedings;
- names and mailing addresses of absentee real property owners and their agents;
- pending applications for building permits and authorized building permits;
- copies of all records that have been released to any person under the D.C. FOIA and that the public body determines have become or are likely to become the subject of subsequent requests for substantially the same records; and
- a general index of the records referred to above, unless the materials are promptly published and copies offered for sale.

D.C. Code § 2-536(a). Some of this information is directly linked from the D.C. Government's FOIA [page](#). You might also find older records within the D.C. Public Records Office, which oversees record retention and [archives](#). Another primary resource for D.C. government information on the Internet is the Office of the [Chief Technology Officer](#). If you do not find the information you are looking for, you should consider making a FOIA request.

III. Which Records Are Subject To Request

Any person has the right to inspect and/or to copy records that fall under the D.C. FOIA upon the submission of a proper request. D.C. Code § 2-532(a). Generally, you do not need to justify your request or explain your purpose to file a valid FOIA request. Except in very limited circumstances discussed below under particular exemptions or fee provisions, who you are or why you want the information does not affect your right to inspect and copy D.C. government records.

You can submit a request for public records held by any "public body" as defined by the Administrative Procedures Act (APA), D.C. Code § 2-539, which includes the Mayor, an agency (including subordinate agencies and independent agencies), and the Council of the District of Columbia. D.C. Code §§ 2-502(3), (18A). The D.C. court system is not subject to FOIA, *see* D.C. Code § 2-502(5), though court records are presumptively open to the public on constitutional and common-law grounds.

Generally, entities that are not positioned wholly within the D.C. government do not constitute public bodies under the APA definition.⁵

Your right to request is also limited to the inspection and/or duplication of “public records.” D.C. Code § 2-532(a). Public records is a term that includes “all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics prepared, owned, or used in the possession of, or retained by a public body.” D.C. Code § 2-502(18). Public records specifically include electronic records. *Id.*

At least one D.C. trial court decision has suggested that whether a record is “public” is governed by the possession and control test used in interpreting the federal FOIA, which is consistent with the definition of a public record provided above.⁶ The federal test for defining agency records requires an inquiry into whether the agency has possession of the material at the time of the request and whether the agency is in control of the record in that it came into the agency’s possession through its legitimate business.⁷ Thus, personal records that government employees happen to bring to the office, for instance, are not subject to a FOIA request.

However, the D.C. FOIA specifically extends its reach to any records “produced or collected pursuant to a contract with a private contractor to perform a public function,” even if they are not physically located within the public body charged with oversight of that contract. D.C. Code § 2-532(a-3).

⁵ See *KiSKA Const. Corporation-U.S.A. v. Washington Metropolitan Area Transit Authority*, 167 F.3d 608 (D.C. Cir. 1999) (WMATA not a public body of D.C.); *Latimer v. Joint Committee on Landmarks of the National Capital*, 345 A.2d 484 (D.C. 1975) (Joint Committee on Landmarks not a public body of D.C. because it is intergovernmental); *Coleman v. U.S.*, 311 A.2d 496 (D.C. 1973) (National Capital Housing Authority not a public body of D.C.). As noted below, however, the D.C. FOIA does extend to records of a private contractor’s performance of a “public function” at the request of an agency.

⁶ See *Belth v. Department of Consumer & Regulatory Affairs*, 115 Washington Legal Reporter 2281 (Super. Ct. 1987).

⁷ *Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 143-46 (1989).

IV. Where to Request Records

You should address your request to the public body (or bodies) you have identified as likely to have the records you want. Some of those public bodies that are subdivisions of other public bodies may not have their own FOIA office, in which case you should look to the parent public body's FOIA office. The D.C. government provides a list of FOIA offices and their contact [information](#).

Each public body is required to make an annual report concerning its FOIA activities, D.C. Code § 2-538; these reports are then compiled in a summary report by the Office of the Secretary, a D.C. public office designated to oversee the handling of public records. These reports contain useful information, including a breakdown of disclosures, claims of exemption, appeals, and delays in responses by each public body. Contact information for each public body's FOIA office is also [listed](#).

Finally, you may find specific guidance about the public body's FOIA practices in its regulations. The Mayor's office and the executive agencies are governed by implementing regulations found at D.C. Mun. Regs. tit. 1, § 400, et. seq. Other entities may have their own FOIA regulations. Such entities include the Board of Elections and Ethics, the University of the District of Columbia, the D.C. Sports Commission, and the D.C. General Hospital. Usually you can find a public body's regulations on its webpage. *See, e.g.*, Office of the Mayor, [Notice of Final Rulemaking](#).

V. Drafting a Request

A. Basics of a Request

To make a FOIA request, you should write a letter to the FOIA office of the public body where you think the documents may be located. The letter and envelope should each be clearly labeled "FOIA Request." You may also submit requests by fax or email, the subject line of which should be "FOIA Request." Finally, most public bodies will accept a request by phone, but you may be required to reduce your request to writing, usually if the request is non-routine. A sample request letter is contained in Appendix I to this Guide.

If you make a request by phone, you should keep your own record of the time and date of the phone call, with whom you spoke, and what you requested. If you make a request in writing, you should note the date and means of delivery on the request. You should also retain a copy of the request and, if possible, obtain proof of the date of the public body's receipt of the request. Thus, if it is sent by email, keep a printout of the email with a date stamp; if by fax, keep the fax confirmation page; or if by mail, send the request letter return receipt requested. Because the public body is required to respond within a certain amount of time after it receives your request, it is

important to document when the time period began. For all of these reasons, it is usually preferable to make your request in writing, even if an agency permits phone requests.

A public body is not required to answer questions you ask or create documents in response to your request, only to produce already existing documents. Thus, a proper FOIA Request would ask for "all records containing or reflecting statistics on the number of parking tickets issued in the District of Columbia," rather than ask for "the number of parking tickets issued in the District of Columbia."

You are also required to reasonably describe the documents you seek, D.C. Code § 2-532(c), so that the public body's search can be targeted to locate the documents you want. A public body is only required to make "reasonable efforts" to search for the records in electronic format, which means that an agency does not have to spend more than eight hours of personnel time to reprogram or reformat records. D.C. Code §§ 2-532(a-2), (f)(1). If you have ideas for search terms or locations where the records may be, you can provide those ideas in your letter, but you are not required to do so. If you do, however, be sure to indicate that the search should include but not be limited to those locations and terms unless you intend them to be limiting.

B. Fees and Fee Waivers

In addition to sufficiently identifying the records you seek, you should address the issue of fees in your request. Public bodies are entitled to charge various fees to recover the cost of responding to your request. The actual fee schedule is determined by each public body's regulations. However, the types of fees that the public body can charge under the statute and your entitlement to a waiver of those fees depend on the purpose of your request and your status as a requester.

If you are requesting records for commercial use, the public body is entitled to charge reasonable standard charges for document search, duplication, and review. D.C. Code § 2-532(b-1)(1). If you are requesting records for scholarly or scientific research on behalf of an educational or non-commercial scientific institution, or if you are a representative of the news media, you can be charged only reasonable standard charges for document duplication. D.C. Code § 2-532(b-1)(2). If you fall into neither of the above categories, you may be charged for document search and duplication. D.C. Code § 2-532(b-1)(3). If you fall into a category that entitles you to pay only limited fees, you should explain your status accordingly in your request.

Regardless of which of the above categories you fall into, you can request a waiver of fees in your FOIA letter. The public body may grant the waiver if it determines that it "is in the public interest because furnishing the information can be considered as primarily benefiting the general public." D.C. Code § 2-532(b). Thus, if you are requesting information to bring an issue to light in the public realm, for the purposes of public education, or for other public benefit, you should explain this in your request for a fee waiver.

Finally, you should be sure to indicate the maximum fee you are willing to incur without consultation by the public body. Alternatively you can request that you be given a fee estimate in advance of any expenditure. This is true even if you request a waiver of fees, as you should indicate what you are willing to pay (or request an estimate) in the event that your fee waiver request is denied. If you fail to enumerate the amount you are willing to pay or request an estimate in advance of incurring expenses, a public body may produce documents and then bill you for the costs associated with processing your request before you have a chance to object. A public body cannot require advance payment of a fee unless that fee exceeds \$250.00 or you have previously failed to pay fees in a timely fashion. D.C. Code § 2-532(b-3). Some regulations provide for automatic waiver of small fees, such as for the first hour of search time.

If you do incur fees, the regulations governing the executive agencies provide that time spent searching for and reviewing records will be charged at rates between \$4.00 and \$10.00 per hour, depending on the grade of employee needed to perform the task, and copies will be charged at \$0.25 per page. D.C. Mun. Regs. tit. 1, § 408.1. With respect to types of duplication other than paper photocopies, or other services not enumerated, the direct cost of the services or reproduction will be charged. *Id.* at § 408.2.

VI. The Public Body's Response

Time for responding. A public body has fifteen business days (excluding weekends and holidays) to respond to a request, either by providing the responsive records or by notifying the requester of a decision not to provide the records. D.C. Code § 2-532(c). The public body may extend its deadline in unusual circumstances for up to ten additional business days. D.C. Code § 2-532(d). Unusual circumstances are limited to requests that encompass particularly voluminous records and requests that require consultation between multiple public bodies or components thereof. *Id.* Failure of a public body to respond within these deadlines constitutes a “constructive denial” of the request – meaning you may treat the failure to respond as a denial for purposes of seeking review, as discussed below. D.C. Code § 2-532(e).

Expedited Processing. Although the D.C. FOIA does not provide any mechanism for requesting expedited processing like exists in the federal FOIA, the vast majority of requests are processed within the fifteen-day time limit, and only a few public bodies have significant backlogs. The average processing time in 2008 across public bodies was fourteen days. You can look up the average response time and the breakdown of the number of requests and response times in the annual FOIA [reports](#).

Exemptions. If a public body denies your request, it is required to cite specific reasons, including the applicable exemptions in the statute. D.C. Code § 2-533(a)(1). There are fourteen categories of records that are exempt from mandatory disclosure under the D.C. FOIA. See D.C. Code § 2-534(a). Documents that fall under these categories can, with one exception, still be released at the discretion of the public body. See D.C. Mun. Regs. tit. 1, § 400.4. One mandatory exemption – pertaining to vital records – leaves the public body no discretion to release the records. Generally, the D.C. courts construe exemptions consistent with the federal FOIA except where the acts differ.⁸ Agencies bear the burden of demonstrating that an exemption applies.

Even if you think that one of the exemptions listed below might apply to information that you are requesting, you do not have to anticipate the exemption or address it in your request. You can simply wait for the agency to claim an exemption for the records and make your argument on appeal. Moreover, any reasonably segregable non-exempt portion of a public record must be provided. D.C. Code § 2-534(b). For instance, if a record contains personally identifying information that would invade the privacy of an individual, the specific identifying information can be redacted by blacking out portions of the text, and the remainder of the record must be released under the D.C. FOIA. The government may only withhold the entire record if the exempt portion is so extensive that the result of the redactions would leave essentially meaningless words and phrases.

These are the materials exempt from disclosure under the D.C. FOIA:

Antitrust Investigations: Any information obtained in an antitrust investigation by the D.C. Attorney General pursuant to D.C. Code § 28-4505 is exempt from disclosure with limited exceptions. D.C. Code § 2-534(a)(8).

Arson Investigations: Any information obtained from an insurance company in the course of investigating arson pursuant to D.C. Code § 5-417 is exempt from disclosure. D.C. Code § 2-534(a)(9).

Business License Center: Disclosure of any information submitted to the Business License Center is limited. A person may obtain information on one registrant by submitting either the name or the address of the registrant, but may only request information on one registrant per day. D.C. Code § 2-534(a)(11); see D.C. Code § 47-2851.06.

Classification: Any materials that are properly classified under the federal classification system pursuant to executive order and in the interest of national defense or foreign

⁸ *Doe v. District of Columbia Metropolitan Police Dept.*, 948 A.2d 1210, 1220 (D.C. 2008). A number of excellent resources explore the extensive case law interpreting the federal FOIA's exemptions. See e.g., Harry A. Hammitt et al., *Litigation Under the Federal Open Government Laws* (2008); Justice Department Guide to the Freedom of Information Act, available at <http://www.usdoj.gov/oip/foi-act.htm>; James T. O'Reilly, *Federal Information Disclosure* (3d ed. 2000).

policy are exempt from disclosure under the D.C. FOIA. D.C. Code § 2-534(a)(7). This provision is nearly identical in wording to the federal FOIA exemption for classified materials. See 5 U.S.C. 552(b)(1). The federal classification system and standards are set out in an Executive Order of the U.S. President.

District of Columbia Homeland Security Commission: Documents related to closed meetings of the Commission are exempt from disclosure. D.C. Code § 2-534(a)(13). Closed meetings occur when they pertain to specific vulnerability assessments, would reveal trade secret or confidential commercial or financial information, or would be detrimental to public safety. See D.C. Code § 7-2271.04.

Emergency Response Plans/Vulnerability Assessments: Any response plans as defined in D.C. Code § 7-2301, which include state plans for emergency preparedness and prevention, and any vulnerability assessments as defined in D.C. Code § 22-3152, are exempt from disclosure. D.C. Code § 2-534(a)(10).

Inter-agency or Intra-agency memoranda: The D.C. FOIA exempts inter- and intra-agency memoranda that would not otherwise be available to a private party in litigation with the agency. D.C. Code § 2-534(a)(4). Like the nearly identical federal provision, this provision functionally exempts materials that fall under various privileges. The D.C. FOIA specifically incorporates three privileges: the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. D.C. Code § 2-534(e). It also recognizes that other privileges may be found by the courts. *Id.* There is very little case law on these privileges in the D.C. courts; thus, the federal interpretations are most valuable. It should be noted that documents only fall under this exemption if they are intra- or inter-agency documents to begin with – in other words, records that have been shared with anyone outside the government do not qualify. Moreover, any privilege may be waived by disclosure to a third party not covered by the privilege. The most commonly invoked privilege, the deliberative process privilege, only applies to documents that are both pre-decisional, meaning that the communications took place before a policy decision was reached, and deliberative, meaning that the record reflects recommendations or opinions expressed as part of the decision-making process. The purpose of this privilege is to protect the quality of the agency's decision-making process.

Law Enforcement Investigations: The D.C. FOIA, in a provision very similar to the federal exemption, allows withholding of materials compiled for law-enforcement purposes, if the disclosure would result in any of several harms enumerated in the statute. D.C. Code § 2-534(a)(3). To qualify as records "compiled for law-enforcement purposes," the D.C. courts have held that, similar to the federal requirements, the records must focus on specific allegations of illegality of particular identified persons that could result in civil or criminal sanctions.⁹ Any records compiled for law-enforcement purposes are only exempt if their disclosure would interfere with law enforcement proceedings or investigations, deprive a person of a fair or impartial

⁹ *Barry v. Washington Post Co.*, 529 A.2d 319, 321-22 (D.C. 1987).

adjudication, constitute an unwarranted invasion of personal privacy, disclose the identify of a confidential source, disclose investigative techniques not generally known, or endanger the life or safety of law-enforcement personnel. D.C. Code § 2-534(a)(3).

Personal Privacy: Records that contain information of a personal nature can be withheld under the D.C. FOIA if public disclosure would constitute a “clearly unwarranted invasion of personal privacy.” D.C. Code § 2-534(a)(2). D.C. courts rely on federal interpretations of what constitutes a “clearly unwarranted invasion of personal privacy,” as determined by balancing the privacy interest in the documents with the public interest in disclosure.¹⁰ The U.S. Supreme Court, in interpreting the corresponding provision of the federal FOIA, has said that the law was not intended to promote the “disclosure of records containing personal details about private citizens.”¹¹ The District has denied release of records if the public interest being balanced under the test does not serve a core public purpose of “shedding light on an agency’s performance of its statutory duties.”¹² Such records as mental health assessments, presentence reports, and academic records are exempt under this provision. Note that this exemption does not prevent the requester from obtaining documents about him- or herself.

Sealed Criminal Records: Criminal records that have been ordered sealed under D.C. Code § 16-801 – 807 are exempt from disclosure. D.C. Code § 2-534(a)(14).

Statutory Exemption: The D.C. FOIA authorizes withholding documents that are specifically exempted from disclosure under other statutes. D.C. Code § 2-534(a)(6). An exemption will not be inferred into a statute and it cannot be based on non-statutory law.¹³ To qualify as an exemption statute under the D.C. FOIA, the statute must not leave any discretion as to disclosure, and it must provide sufficient definition/criteria to determine which materials are to be withheld. Examples of records exempt under D.C. withholding statutes include certain records associated with disciplinary proceedings by the Board of Nursing against a nurse, D.C. Code § 3-1251.07(c); certain sex offender registration information, D.C. Code § 22-4017; and certain information submitted to the Mayor concerning insurance regulation, D.C. Code § 31-1903. This provision is identical to the corresponding federal exemption. See 5 U.S.C. 552(b)(3).

Test Questions: The D.C. FOIA protects from disclosure any test questions and answers to be used in future license, employment, or academic examinations. D.C. Code § 2-534(a)(5). Previously used questions and answers do not fall under this provision. *Id.* This exemption has no federal counterpart.

¹⁰ See *Hines v. District of Columbia Bd. of Parole*, 567 A.2d 909, 912 (D.C. 1989).

¹¹ *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 766 (1989).

¹² *Foster v. Univ. of the District of Columbia*, FOIA App. No. 92-8 (Office of the Mayor, Oct. 30, 1995).

¹³ *Barry v. Washington Post Co.*, 529 A.2d 319, 322 (1987); *Newspapers Inc. v. Metropolitan Police Dep’t*, 546 A.2d 990, 1001 (D.C. 1988).

Trade Secrets/Commercial or Financial Information: This exemption permits withholding of information obtained from outside of the government if disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained. D.C. Code § 2-534(a)(1). Thus, information generated by the government itself is not exempt as a trade secret. D.C. courts require a party seeking to invoke this exemption to show (1) that the person from whom the information was obtained faces actual competition and (2) that disclosure will cause substantial competitive injury.¹⁴ D.C. courts have not resolved whether a withholding under this exemption can be justified based on the government's showing that disclosure would impair its ability to collect similar information in the future, a justification which is valid under the federal FOIA.¹⁵

Vital Records Act: This is the D.C. FOIA's sole mandatory exemption. See D.C. Code § 2-534(d). Records that fall under the Vital Records Act, including records and certificates concerning birth, death, marriage, divorce, or annulment, see D.C. Code § 7-201(15), are exempt from disclosure under the D.C. FOIA. Any disclosure of these documents must adhere to the requirements of the Vital Records Act itself. Under that Act, these documents may only be released to a directly interested person, most often an immediate relative. D.C. Code § 7-220. However, records under this act do become public after certain time periods elapse (e.g., 100 years from birth, 50 years from marriage). D.C. Code § 7-219(c).

Whistleblower Employees: Documents that would identify by name an otherwise unknown whistleblower as defined in D.C. Code § 1-615.52, et seq., and D.C. Code § 2-223.01, et seq., are exempt from disclosure. D.C. Code § 2-534(a)(12).

VII. Process for Seeking Review Through Administrative Appeal or Filing A Lawsuit

There are two basic review mechanisms built into the D.C. FOIA: administrative appeal and judicial review. Administrative appeals go to the Office of the Mayor, but the responsibility for handling FOIA appeals has been delegated to the Office of the Secretary. D.C. Mun. Regs. tit. 1, § 412.2. Lawsuits are filed in the Superior Court of the District of Columbia. Depending on from whom you requested records, you may be required to pursue one or the other of these avenues to challenge a withholding.

If you submitted a request to the Council of the District of Columbia and the Council either did not respond within the prescribed period of time or responded with any form of denial, you have the right immediately to sue in court over the withheld

¹⁴ *Washington Post Co. v. Minority Business Opportunity Comm'n*, 560 A.2d 517, 522 (D.C. 1989).

¹⁵ *See id.* at 523-24.

records. D.C. Code § 2-537(a-1). There is no alternative avenue for administrative appeal.

If you submitted a request to a public body other than the Council of the District of Columbia, and you either received a denial (in full or in part) or did not receive a response within the time prescribed, you have two options. The first option is to appeal that denial or constructive denial to the Secretary, acting on behalf of the Mayor. See D.C. Code § 2-537(a); D.C. Code § 2-532(e) (failure to respond constitutes constructive denial). As a second option, the regulations governing the executive agencies make clear that a requester also has the right to immediately sue over any denial, without going through the administrative appeals process. D.C. Mun. Regs. tit. 1, § 412.1. If you choose to file an administrative appeal, the Office of the Mayor has ten working days to respond to your appeal. If the Mayor does not respond within the time limit, or if your appeal is denied (i.e., the withholding of the records is upheld), you then have the renewed right to sue in court. D.C. Code § 2-537(a)(1).

If you file an administrative appeal, you should label your letter and envelope "FOIA Appeal," and you must include a copy of the original request and response. You must also provide a copy of the appeal to the public body with which you originally filed your request. Your appeal should be addressed to "Mayor's Correspondence Unit; FOIA Appeal; 1350 Pennsylvania Ave, NW; Suite 221; Washington, D.C. 20004." You should try to include as much detail as possible in your appeal letter about why you are entitled to the withheld records, as discussed further below. A sample administrative appeal letter is in Appendix II to this Guide.

If you seek judicial review of any denial, it is helpful to have a lawyer represent you in court. Although FOIA cases are more straightforward than some others, and therefore pro se litigants can sometimes successfully bring these cases, you increase your chances of prevailing if you retain counsel. If you win your case in court in whole or in part, you may be awarded reasonable attorneys fees, if you retained a lawyer, and the costs of litigation. D.C. Code § 2-537(c).

VIII. Issues to Challenge on Appeal or in a Lawsuit

In either an administrative appeal or a lawsuit, you may challenge any form of denial of records you seek. If a public body has failed to respond to your request entirely, you may challenge that failure as if it withheld all of the records. If the public body simply had not gotten around to responding to your request, a lawsuit or appeal might prompt action. If the public body claims that the documents you seek are exempt, that issue can be litigated once it is claimed.

If a public body responded that it had not located any records responsive to your request, or if the sole records found were not what you were looking for, you may

challenge the adequacy of the search.¹⁶ Then, the public body will bear the burden to demonstrate that “the search method . . . was reasonably calculated to recover all relevant documents and must identify the terms searched or explain how the search was conducted.”¹⁷

Most commonly, appeals and lawsuits are brought to challenge withholdings of records in whole or in part based on an exemption under the D.C. FOIA. You can make such a claim even if the public body only withheld a small amount of material, such as a redaction. The public body bears the burden of proving that the exemption applies, because the presumption in the D.C. FOIA favors disclosure. The court will review the decision to withhold records *de novo*, which means that the court will not give deference to the public body’s decision, but rather will make an independent legal determination about the records’ exempt or nonexempt status.¹⁸ And, courts construe exemptions narrowly so as to promote the D.C. FOIA’s goal of increased disclosure.¹⁹

Moreover, if the response to your request claimed that the records were not public records, or that the entity from which you requested records was not a public body, you can also challenge those determinations on appeal or in court because these responses also constitute withholdings of records.

Finally, if you were denied a requested waiver of fees based on the public interest in disclosure of the records you seek, you may be able to challenge that determination as a stand-alone issue. Fee-waiver decisions have been administratively appealed, but there are no judicial decisions reported on this topic in D.C. Under the federal FOIA, however, fee waiver decisions can be challenged as a stand-alone claim in court. If you were denied a fee waiver, challenging that decision on administrative appeal or in court is worth considering.

Any person who commits an arbitrary or capricious violation of the D.C. FOIA can be prosecuted for a minor criminal infraction, potentially resulting in a small fine. Prosecution of criminal FOIA offenses is very rare in all jurisdictions, however.

¹⁶ See *Doe v. District of Columbia Metropolitan Police Dept.*, 948 A.2d 1210, 1220 (D.C. 2008).

¹⁷ *Id.* at 1221 (internal citations and quotations omitted).

¹⁸ *Office of the People’s Counsel v. Public Service Comm’n of the District of Columbia*, 955 A.2d 169, 173 (D.C. 2008).

¹⁹ *Washington Post Co.*, 560 A.2d at 521.

IX. Conclusion

The D.C. FOIA is a powerful tool for citizens, businesses, journalists, non-profits, and community organizations. This tool has the greatest impact when those who seek to use it are informed about their rights and committed to pursuing those rights. We hope this Guide will assist citizens in using the D.C. FOIA, increase participation in government and civic affairs, and promote a strong commitment to government transparency.

Appendix I: Sample Request Letter

Note: Fill in your own information in lieu of CAPS before sending, optional portions of the request are in brackets.

DATE

NAME, FOIA Officer
ADDRESS

Re: FOIA Request

Dear NAME:

[On behalf of ORGANIZATION, and] Pursuant to the District of Columbia Freedom of Information Act, codified at D.C. Code § 2-532 et seq., I request the following records:

- 1) ITEM NUMBER ONE, REASONABLY DESCRIBED
- 2) ITEM NUMBER TWO, ETC.

If it is your position that records exist that are responsive to this request, but that those records (or portions of those records) are exempt from disclosure, please identify the records that are being withheld and state the basis for the denial for each record being withheld. In addition, please provide the nonexempt portions of the records.

[I or ORGANIZATION request[s] that all fees in connection with this FOIA request be waived in accordance with D.C. Code § 2-532(b) because waiver is "in the public interest because furnishing the information can be considered as primarily benefiting the general public." DESCRIBE HOW RELEASE OF RECORDS WILL BENEFIT THE PUBLIC. Accordingly, I or ORGANIZATION request[s] that you waive all fees for locating and duplicating the requested records.]

[Alternatively, I or ORGANIZATION qualify[ies] as a representative of the news media [or scientific/research institution] entitled only to be assessed duplication fees, and not search or review fees under D.C. Code § 2-532(b-1)(2). EXPLAIN ACTIVITIES THAT QUALIFY.]

If fees may be incurred, then please advise me of the amount of any proposed search, review, and reproduction charges before those activities are carried out. [ALTERNATIVELY, AUTHORIZE UP TO A CERTAIN AMOUNT.]

I will expect a response within 15 business days as provided by law. If you have any questions regarding this request, please contact me at TELEPHONE NUMBER.

Sincerely,
REQUESTER'S NAME, FULL ADDRESS, EMAIL

Appendix II: Sample Administrative Appeal Letter

Note: Fill in your own information in lieu of CAPS before sending, optional portions of the request are in brackets.

DATE

Mayor's Correspondence Unit
FOIA Appeal
1350 Pennsylvania Ave, NW
Suite 221
Washington, DC 20004

Re: FOIA Appeal

Dear FOIA Appeal Officer:

By letter dated DATE, I requested pursuant to the District of Columbia Freedom of Information Act, codified at D.C. Code § 2-532 et seq.:

- 1) ITEM NUMBER ONE, SAME DESCRIPTION AS REQUEST
- 2) ITEM NUMBER TWO, ETC.

By letter dated DATE, NAME of the PUBLIC BODY NAME denied my [fee waiver] request in full [OR IN PART, AND EXPLAIN BRIEFLY WHAT WAS DENIED AND WHAT WAS GRANTED IF IN PART]. Copies of this correspondence are enclosed. Pursuant to D.C. Code § 2-537(a) I hereby appeal that [partial] denial.

The [partial] denial of my request was improper because [EXPLAIN WHY RECORDS ARE NOT EXEMPT AS CLAIMED, WHY SEARCH WAS INADEQUATE, WHY BODY OR RECORD IS PUBLIC CONTRARY TO DENIAL EXPLANATION AND/OR WHY FEE WAIVER OR REDUCED FEE STATUS WAS IMPROPERLY DENIED].

I will expect a response within 10 business days as provided by law. If you have any questions regarding this appeal, please contact me at TELEPHONE NUMBER.

Sincerely,
REQUESTER'S NAME, FULL ADDRESS, EMAIL