

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE



2018 FEB -1 PM 3:12
OFFICE OF THE
SECRETARY

February 1, 2018

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Pursuant to the District of Columbia Freedom of Information Act ("DC FOIA"), I am writing to transmit the attached report from the Office of the Attorney General for the District of Columbia to the Council of the District of Columbia. This report contains specified data pertaining to litigation arising under the DC FOIA for the previous fiscal year.

If you have any questions, you may contact me or your staff may contact Deputy Attorney General James A. Pittman on (202) 724-6517.

Sincerely,

Karl A. Racine
Attorney General for the District of Columbia

Attachment

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



OFFICE OF THE ATTORNEY GENERAL'S FISCAL YEAR 2017
FREEDOM OF INFORMATION ACT LITIGATION REPORT
(October 1, 2016 through September 30, 2017)

Pursuant to the District of Columbia Freedom of Information Act ("DC FOIA"), this report from the Office of the Attorney General for the District of Columbia ("OAG") to the Council of the District of Columbia contains the following specified data pertaining to litigation arising under the DC FOIA for the previous fiscal year:

1. The case name and number for each case arising under the DC FOIA;
2. The exemption(s) involved in each case, where applicable;
3. The disposition of the case; and
4. The costs, if any, assessed pursuant to D.C. Official Code § 2-537(c).

D.C. Official Code § 2-538(c) (2001).

CIVIL LITIGATION DIVISION FY 2017 FOIA REPORT

1. a. Case Name/Number: *Frankel v. D.C. Office of the Deputy Mayor for Planning and Economic Development*, (EOM), Civ. No. 10-312
- b. Exemption(s) Claimed: D.C. Official Code § 2-534(a)(4), (e) – Deliberative Process and Attorney–Client Privileges
- c. Disposition of Case: Plaintiff's motion for summary judgment was granted in part on December 16, 2011. Plaintiff's motion for attorney's fees and costs was granted in part and denied in part on March 13, 2013. The Court awarded Plaintiff fees and costs in the amount of \$21,110.46. Plaintiff appealed the March 13, 2013 Order awarding fees and costs. On February 12, 2015, the Court of Appeals ruled that attorney's fees are potentially available where a plaintiff shows a causal nexus between a court action and a FOIA production, whether or not the production was court-ordered. The case was remanded to the Superior Court, and briefing on the fees motions was completed on June 25,

2015. The Court awarded fees and costs in the amount of \$89,721.31 on January 24, 2017, and the District appealed. The litigation continued as to Plaintiff's Third Supplemental Application for Attorney's Fees and Other Costs of Litigation. While the case was on appeal, the case was settled for \$111,000.00, and the case is now concluded.

- d. Costs Assessed: The case was settled for \$111,000.00 in December 2017.
2. a. Case Name/Number: *Kirby Vining v. District of Columbia*, (ANC-5E), Civ. No. 13-8189
- b. Exemption(s) Claimed: Private e-mails of individual commissioners were not subject to FOIA.
- c. Disposition of Case: The District did not prevail on its exemption claim. On November 3, 2015, the Court granted Plaintiff's motion for attorney's fees and costs and awarded him \$65,241 in fees and costs of \$880.90, for a total of \$66,121.90. Both parties appealed from this judgment on November 30, 2015. The appeal is still pending.
- d. Costs Assessed: \$66,121.90
3. a. Case Name/Number: *James Kane v. District of Columbia*, (ANC-2F), Civ. No. 2014 CA 3386
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(4), (e) – Deliberative process
- c. Disposition of Case: On July 9, 2015, the Court denied Plaintiff's Second Motion for Summary Judgment and dismissed the case. Plaintiff appealed, and the appeal remains pending.
- d. Costs Assessed: None.
4. a. Case Name/Number: *James Parker-El v. McGinley, et al.*, (D.C. Superior Court), Civ. No. 15-8556
- b. Exemption(s) Claimed: None, however, the Superior Court is not subject to FOIA.
- c. Disposition of Case: The Court granted the District's motion to dismiss on March 15, 2016. Plaintiff appealed, and the appeal remains pending. On May 24, 2017 the Court of Appeals affirmed the original order dismissing the case. The Court of Appeals' mandate issued June 14, 2017. The case is now concluded.

- d. Costs Assessed: None.
5. a. Case Name/Number: *Ashley Arrington v. District of Columbia*, (D.C. Superior Court), Civ. No. 15-8731
- b. Exemption(s) Claimed: None, however, the Superior Court is not subject to FOIA.
- c. Disposition of Case: The Court granted the District's motion to dismiss on March 3, 2016. Plaintiff has appealed. On January 18, 2017, the Court of Appeals affirmed the dismissal. The case is now concluded.
- d. Costs Assessed: None.
6. a. Case Name/Number: *Friends of McMillan Park v. District of Columbia*, (DMPED), Civ. No. 16-2373
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(4), (e) – Deliberative Process, Consultant Corollary, and Attorney–Client Privilege; D.C. Code § 2-534(a)(1) – Trade Secrets; D.C. Code § 2-534(a)(2) – Personal Privacy
- c. Disposition of Case: The District produced an additional 378 documents (1601 pages) on January 13, 2017. The District has filed a motion for summary judgment, which remains pending. Plaintiff has filed a motion for attorney's fees and costs, which remains pending.
- d. Costs Assessed: None.
7. a. Case Name/Number: *Vaughn Bennett v. District of Columbia*, (DCPS), Civ. No. 16-2918
- b. Exemption(s) Claimed: None.
- c. Disposition of Case: The District has produced documents. The parties mediated plaintiff's claim for attorney's fees. The case was settled for \$21,000.00 and dismissed by consent on August 7, 2017.
- d. Costs Assessed: The case was settled for \$21,000.00.
8. a. Case Name/Number: *Calvin Bright v. District of Columbia, et al.*, (MPD), Civ. No. 16-008825 B.
- b. Exemptions claimed: D.C. Code § 2-534(a)(2), (a)(3)(C) (invasion of privacy)

- c. Disposition: Pending motion to dismiss.
- d. Costs assessed: None.
9. a. Case Name/Number: *Wallace Mitchell v. District of Columbia, et al.*, (DOC), Civ. No. 17-000555 B
- b. Exemptions claimed: None.
- c. Disposition: The Court granted the District's motion for summary judgment
- d. Costs assessed: None.
10. a. Case Name/Number: *Ronald Robinson v. MPD and Cathy Lanier, Chief*, (MPD), Civ. No. 2017 CA 0789, (D.C. Super. Ct.)
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(3) (investigatory records).
- c. Disposition: Open. The District's motion for summary judgment is pending. A status conference is scheduled for March 14, 2018.
- d. Costs Assessed: None. The Court has not ruled on the dispositive motion.
11. a. Case Name/Number: *Wallace Mitchell v. District of Columbia, et al.*, (DOC), Civ. No. 17-2290 B.
- b. Exemptions claimed: None.
- c. Disposition: The District's motion for summary judgment is pending.
- d. Costs assessed: None.
12. a. Case Name/Number: *Widmon Butler v. District of Columbia, et al.*, (OIG, US Attorney's Office), Civ. No. 17-5806 B.
- b. Exemptions claimed: None-Documents requested do not exist.
- c. Disposition: Case is in discovery. Discovery deadline is April 2, 2018. Dispositive motions deadline of May 2, 2018.
- d. Costs assessed: None.
13. a. Case Name/Number: *April Goggans v. MPD*, (MPD), Civ. No. 17-

7926 B.

b. Exemptions claimed: D.C. Code § 2-534(a)(3) (investigatory records)

c. Disposition: Response to Complaint due February 5, 2018

d. Costs assessed: None.

14. a. Case Name/Number: *Edge Investments, LLC v. District of Columbia, et al.*, (DCRA), Civ. No. 17-008606 B

b. Exemptions claimed: None.

c. Disposition: Response to Complaint due March 12, 2018

d. Costs assessed: None.

PUBLIC INTEREST DIVISION FY 2017 FOIA REPORT

1. a. Case Name/Number: *Eastern Market Metro Community Ass'n v. District of Columbia*, (DMPED) Civ. No. 2014 CA 005768 B

b. Exemptions claimed: None.

c. Disposition: Closed.

d. Costs assessed: Settled attorney's fees and costs for \$81,554.

2. a. Case Name/Number: *Partnership for Civil Justice Fund v. District of Columbia*, (MPD, EOM), Civ. No. 2016 CA 5752 B

b. Exemptions claimed: D.C. Code § 2-534(a)(2) (personal privacy)

c. Disposition: Open. Parties are engaged in settlement of attorney's fees and costs.

d. Costs assessed: None to date.

3. a. Case Name/Number: *Partnership for Civil Justice Fund v. District of Columbia*, (MPD), Civ. No. 2017 CA 001931 B

b. Exemptions claimed: D.C. Code § 2-534(a)(2) (personal privacy), (a)(3) (investigatory records), (e) (law enforcement privilege).

c. Disposition: Open. OAG filed summary judgment motion in September 2017 which remains pending.

- d. Costs assessed: None to date.
- 4. a. Case Name/Number: *Thorp v. District of Columbia*, (MPD), Civ. No. 2016 CA 2486 B
- b. Exemptions claimed: None.
- c. Disposition: Open. OAG filed motion for summary judgment.
- d. Costs assessed: None to date.