

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

January 31, 2021

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

Dear Chairman Mendelson:

Under D.C. Official Code § 2-538(c), 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 data pertaining to litigation arising under the District of Columbia Freedom of Information Act for the previous fiscal year.

If you have any questions, please contact Deputy Attorney General Emily Gunston via email at Emily.Gunston@dc.gov, or by phone at (202) 805-7638.

Sincerely,

Karl A. Racine by V.S.

KARL A. RACINE
Attorney General

Enclosures

OFFICE OF THE ATTORNEY GENERAL FY 2021 FOIA REPORT

1. a. Case Name/Number: *Kirby Vining v. District of Columbia*, (ANC-5E), Civ. No. 2013 CA 008189 B
b. Exemption(s) Claimed: D.C. Code § 2-534(a)(2) (personal privacy); D.C. Code § 2-534(a)(4) (deliberative process)
c. Disposition: Closed. The District did not prevail on its exemption claim and was unsuccessful on appeal. The Court awarded Plaintiff \$132,420.04 in attorney's fees and costs that Plaintiff incurred in the trial court and the court of appeals. The court then awarded Plaintiff an additional \$6,541.51 in additional fees for the work done litigating attorney's fees.
d. Costs Assessed: \$138,954.55.

2. a. Case Name/ Number: *Amy Phillips v. District of Columbia*, (MPD), Civ. No. 2019 CA 004054 B
b. Exemption(s) Claimed: D.C. Code § 2-534(a)(2) (personal privacy); D.C. Code § 2-534(a)(3) (investigatory records)
c. Disposition: Closed. Plaintiff retained an attorney, and the parties agreed to dismiss the case with prejudice. The parties filed a stipulation of dismissal.
d. Costs Assessed: None.

3. a. Case Name/ Number: *Judicial Watch, Inc. v. District of Columbia*, (ANC), Civ. No. 2019 CA 007410 B.
b. Exemption(s) Claimed: D.C. Code § 2-534(a)(2) (personal privacy).
c. Disposition: Closed. The parties agreed to dismiss the case with prejudice and filed a stipulation of dismissal.
d. Costs Assessed: None, but the case was settled for \$12,000 in attorney's fees and costs.

4. a. Case Name/ Number: *Frances Rose v. District of Columbia*, (MPD), Civ. No. 2019 CA 006568 B
b. Exemption(s) Claimed: None.

- c. Disposition: Closed. The video has been disclosed, and both parties filed motions for summary judgment. The Court denied the District's motion and granted the plaintiff's motion, finding that the lawsuit was the catalyst for disclosure of the requested video. On January 27, 2021, the Court granted Plaintiff's motion for fees and costs in part.
- d. Costs Assessed: \$8,000.
5. a. Case Name/Number: *Anne Davis v. District of Columbia*, (OSSE), No. 2019 CA 001186 B
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(2) (personal privacy); D.C. Code § 2-534(a)(6) (other laws – HIPAA, IDEA, FERPA)
- c. Disposition: Closed. The parties filed cross-motions for summary judgment. On March 2, 2020, the Court granted in part and denied in part each party's summary judgment motion and ordered the District to produce redacted versions of two documents. Plaintiff filed a motion for attorney's fees as a prevailing party and the District opposed. On October 20, 2020, the Court granted Plaintiff's motion in part and awarded \$39,141 in attorney's fees and \$265.70 in costs. On November 17, 2020, the District moved to alter or amend judgment on the basis that the Court failed to apply the D.C. Court of Appeals' four-part test required to determine whether Plaintiff is entitled to attorney's fees under the DCFOIA. On March 3, 2021, the Court granted the motion in part and denied in part, holding that it erred in not applying the four-part test but, applying the test, held that Plaintiff was entitled to amount of fees previously ordered. The parties settled Plaintiff's attorney's fees-on-fee for \$7,250 in April 2021.
- d. Costs Assessed: The Court awarded \$39,406.70 in fees and costs. In addition, the parties settled Plaintiff's request for fees-on-fee for \$7,250.
6. a. Case Name/ Number: *Judicial Watch, Inc. v. District Dep't of Transportation, et al.*, (EOM, DDOT, DPW), Civ. No. 2020 CA 003357 B
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(2) (personal privacy); D.C. Code § 2-534(e) (deliberative process); D.C. Code § 2-534(a)(10) (emergency response plan); D.C. Code § 2-534(a)(4) (law enforcement)

- c. Disposition: Closed. The District moved to dismiss the Complaint on October 30, 2020, because the District's FOIA response and appeal deadlines were extended under emergency COVID legislation enacted by the D.C. Council, and thus Plaintiff had not exhausted its claim and the claim was not ripe. The Court granted the motion in part and denied in part on February 24, 2021, and allowed Plaintiff to file an amended complaint, which was then filed on March 2, 2021. Defendants answered on March 17, 2021. After non-exempt responsive records were provided, the parties stipulated to dismissal of the action with prejudice on June 10, 2021.
- d. Costs Assessed: None.
7. a. Case Name/ Number: *Energy Policy Advocates v. D.C. Office of the Attorney General*, (OAG), Civ. No. 2020 CA 002462 B
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(4) (joint defense privilege; attorney-client privilege; attorney work product doctrine)
- c. Disposition: Closed. Plaintiffs sought production of common interest agreements (CIA) entered into by OAG from 2017 through 2020. OAG produced an initial Vaughn Index and then provided a supplemental Vaughn Index of responsive CIAs after conducting a more expansive search, withholding documents exempt from disclosure. The Court granted the District's motion for summary judgment on June 30, 2021, holding that OAG's supplemental production of CIAs with redactions to privileged material complied with FOIA and that the District had demonstrated that OAG conducted an adequate search for responsive records. However, because responsive records were provided after the litigation was brought, Plaintiff was entitled to attorney's fees. The parties settled Plaintiff's attorney's fees for \$15,000 at mediation in September 2021.
- d. Costs Assessed: None, but the parties settled for \$15,000.
8. a. Case Name/Number: *Claudia Barber v. Office of Administrative Hearings*, Civ. No. 2020 CA 001022 B
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(2) (personal privacy) and (a)(4) (deliberative process)

- c. Disposition of Case: Open. OAH filed a motion to dismiss and for summary judgment on October 13, 2020 and November 12, 2020. The Court granted Plaintiff leave to amend the complaint on July 27, 2021, and again on September 20, 2021, and denied all pending dispositive motions as moot. OAH's motion to stay discovery was granted on October 6, 2021, and the agency has now produced all responsive, non-exempt records. The Parties agreed during a January 5, 2022 status hearing to confer and jointly propose a schedule for briefing any outstanding disputes by January 28, 2022.
- d. Costs Assessed: None to date.
9. a. Case Name/ Number: *Washington Legal Clinic for the Homeless v. District of Columbia*, (DHS), Civ. No. 2020 CA 001678 B
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(3)(C) (law enforcement personal privacy); D.C. Code § 2-534(a)(6) (other laws – D.C. Code §§ 4-754.21(12) 4-754.11(a)(7) (The Homeless Services Reform Act), D.C. Code § 4-209.04(c) (District Public Assistance Act), 42 U.S.C. § 10406(c)(5) (Family Violence Prevention and Services Act), 20 U.S.C. § 1232g (Family Educational Rights and Privacy Act), D.C. Code § 7-3006 (Choice in Drug Treatment Act)).
- c. Disposition: Closed. The parties agreed to dismiss the case with prejudice and filed a stipulation of dismissal.
- d. Cost Assessed: None, but the case was settled for \$41,701.69 in attorney's fees and costs.
10. a. Case Name/ Number: *Vaughn Bennett v. District of Columbia*, (MOAAA), Civ. No. 2020 CA 002376 B
- b. Exemption(s) Claimed: D.C. Code §§ 2-534(a)(2) (personal privacy); D.C. Code §§ 2-534(a)(4), (e) (deliberative process privilege, attorney work product doctrine, attorney-client privilege).
- c. Disposition: Closed. The parties agreed to dismiss the case with prejudice and filed a stipulation of dismissal.

- d. Cost Assessed: None, but the case was settled for \$8,000 in attorney's fees and costs.
11. a. Case Name/ Number: *Partnership for Civil Justice Fund v. District of Columbia*, (MPD), Civ. No. 2018 CA 001083 B (Project Veritas FOIA)
- b. Exemption(s) Claimed: D.C. Code §§ 2-534(a)(2) (personal privacy); D.C. Code §§ 2-534(a)(4) (law enforcement privilege).
- c. Disposition: Open. On July 1, 2021, the Court denied the District's motion for summary judgment and partially granted plaintiff's cross-motion for summary judgment, requiring the District to perform a new search, which did not uncover any additional records. The parties will discuss the possibility of settlement.
- d. Cost Assessed: None to date.
12. a. Case Name/ Number: *Partnership for Civil Justice Fund v. District of Columbia*, (MPD), Civ. No. 2017 CA 001931 B
- b. Exemption(s) Claimed: D.C. Code §§ 2-534(a)(2) (personal privacy); D.C. Code §§ 2-534(a)(4) (law enforcement privilege).
- c. Disposition: Reopened. OAG obtained summary judgment in December 2019. Plaintiff moved for relief from the judgment in December 2020, and the motion remains pending.
- d. Cost Assessed: None to date.
13. a. Case Name/ Number: *WP Company LLC v. District of Columbia*, (EOM, OUC, MPD, OCME), Civ. No. 2021 CA 002114 B
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(2) (personal privacy); D.C. Code §§ 2-534(a)(4), (e) (deliberative process privilege).
- c. Disposition: Open. OAG moved to dismiss after EOM produced responsive records. Other requests remain outstanding.
- d. Costs Assessed: None to date.
14. a. Case Name/ Number: *Aaron Raymond Babbitt v. District of Columbia*, (MPD),

- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(2) (personal privacy); D.C. Code § 2-534(a)(3)(A)(i) (interference with enforcement proceeding); D.C. Code § 2-534(a)(3)(C) (law enforcement privacy); D.C. Code § 2-534(a)(3)(E) (law enforcement techniques and procedures); D.C. Code § 2-534(a)(3)(F) (law enforcement officer safety); D.C. Code § 2-534(a)(4) (law enforcement privilege); D.C. Code § 2-534(a)(6) (exempt under other statute).
- c. Disposition: Open. OAG moved to dismiss after MPD produced all responsive, non-exempt records. Plaintiff opposed and the parties await the Court's decision.
- d. Costs Assessed: None to date.
15. a. Case Name/ Number: *American Civil Liberties Union v. District of Columbia, (MPD)*, Civ. No. 2021 CA 000452 B
- b. Exemption(s) Claimed: None.
- c. Disposition: Closed. MPD produced all responsive data under the Neighborhood Engagement Achieves Results (NEAR) Act, and the parties settled the matter.
- d. Costs Assessed: None. The case was settled for \$15,000.
16. a. Case Name/ Number: *Natasha Kay v. District of Columbia, (MPD)*, Civ. No. 2021 CA 000862 B
- b. Exemption(s) Claimed: None.
- c. Disposition: Closed. The body-worn camera footage was produced, and plaintiff voluntarily dismissed the case.
- d. Costs Assessed: None.
17. a. Case Name/ Number: *Fraternal Order of Police v. District of Columbia, (MPD)*, Civ. No. 2021 CA 003695 B
- b. Exemption(s) Claimed: D.C. Code § 2-532(a-2) (more than eight hours to reprogram or reformat records)

- c. Disposition: Open. The parties are discussing a possible resolution, and a status hearing is set for April 8, 2022.
- d. Costs Assessed: None.
18. a. Case Name/Number: *Judicial Watch v. District of Columbia*, (OCME), Case No. 2021 CA 000875 B
- b. Exemption(s) Claimed: D.C. Code §§ 2-534(a)(2) (personal privacy) and (a)(4), (e) (deliberative process, attorney-client privileges; attorney work-product doctrine)
- c. Disposition: Open. The Court consolidated this case with *Judicial Watch v. District of Columbia*, (OCME and MPD), Case No. 2021 CA 001710 B. MPD and OCME produced all non-exempt records and provided indices of withheld and redacted documents. The parties submitted a status report to the Court on January 19, 2022, requesting a briefing schedule regarding the issues in dispute.
- d. Costs Assessed: None to date.
19. a. Case Name/Number: *Judicial Watch v. District of Columbia*, (OCME and MPD), Case No. 2021 CA 001710 B
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(2) (personal privacy); D.C. Code §§ 2-534(a)(4), (e) (deliberative process and law enforcement privileges); (a)(3)(A)(i) (investigatory records); (a)(3)(C) (law enforcement privacy), (a)(3)(E) (investigative procedures and techniques), (a)(3)(F) (life or physical safety of law enforcement personnel)
- c. Disposition: Open. The Court consolidated this case with *Judicial Watch v. District of Columbia*, (OCME and MPD), Case No. 2021 CA 000875 B. MPD and OCME produced all non-exempt records and provided indices of withheld and redacted documents. The Parties submitted a status report to the Court on January 19, 2022, requesting a briefing schedule regarding the issues in dispute.
- d. Costs Assessed: None to date.
20. a. Case Name/ Number: *Safe Healthy Playing Fields v. District of Columbia*, (DPR), Civ. No. 2020 CA 004979 B

- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(4) (deliberative process privilege)
- c. Disposition: Open. The Court granted in part and denied in part the District's motion for summary judgment and granted in part and denied in part Plaintiff's motion for summary judgment on January 20, 2022. The parties must submit a joint report to the Court regarding any further disputes by February 4, 2022, and a status hearing is scheduled for March 4, 2022.
- d. Costs Assessed: None to date.
21. a. Case Name/ Number: *Goodman v. District of Columbia*, (HSEMA), Civ. No. 2021 CA 003359 B
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(2); D.C. Code § 2-534(a)(4)
- c. Disposition: Open. The District filed its answer to the Complaint on November 29, 2021. An initial scheduling conference is set for January 21, 2022. HSEMA is in the process of conducting a search for more responsive records.
- d. Costs Assessed: None to date.
22. a. Case Name/ Number: *Montgomery v. District of Columbia*, (OHR), Civ. No. 2021 CA 002983 B
- b. Exemptions Claimed: D.C. Code § 2-534(a)(6) (protected from disclosure by statute); D.C. Code § 2-534(a)(2) (personal privacy); D.C. Code § 2-534(a)(3)(A)(i) (law enforcement records); D.C. Code § 2-534(a)(3)(c) (law enforcement privacy)
- c. Disposition: Closed. The District moved to dismiss the Complaint on November 29, 2021, for Plaintiff's failure to properly effect service on the District and for failure to state a claim based on the applicable FOIA exemptions. On December 8, 2021, the Court granted the motion in part, dismissing the Complaint without prejudice for Plaintiff's failure to properly serve the District.
- d. Costs Assessed: None.
23. a. Case Name/ Number: *Bedrock Media v. District of Columbia*,

(OCFO), Civ. No. 2021 CA 2969 B

- b. Exemption(s) Claimed: (D.C. Code § 2-534 (a)(1)) (trade secrets or commercial or financial information exemption); (D.C. Code. § 2-534 (a)(4)) (deliberative process privilege/attorney-client privilege).
- c. Disposition: Open. Additional responsive documents were produced after the lawsuit was brought, and OAG moved for summary judgment in November 2021.
- d. Costs Assessed: None to date.
24. a. Case Name/ Number: *Christopher Bangs v. District of Columbia*, (DOES), Civ. No. 2020 CA 3799 B
- b. Exemption(s) Claimed: (D.C. Code § 2-534 (a)(1)) (trade secrets or commercial or financial information exemption); D.C. Code §§ 2-534(a)(2) (personal privacy).
- c. Disposition: Closed. Additional responsive documents were produced after the lawsuit was brought, and the Court granted Plaintiff's motion for summary judgment. The parties settled the case for \$60,000 in attorney's fees and costs.
- d. Costs Assessed: None, but the case has been settled for \$60,000 in attorney's fees and costs.
25. a. Case Name/ Number: *Jacob Bournazian v. District of Columbia* (DDOT), Civ. No. 2021 CA 002704 B
- b. Exemption(s) Claimed: None.
- c. Disposition: Closed. On January 14, 2022, the Court granted summary judgment to the District.
- d. Costs Assessed: None.
26. a. Case Name/ Number: *April Goggans v. District of Columbia* (MPD), DCCA No. 19-CV-321
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(3) (investigatory records).
- c. Disposition: The District prevailed below. The matter is fully briefed and awaiting calendaring in the DCCA.

- d. Costs Assessed: N/A
27. a. Case Name/ Number: *District of Columbia v. Terris, Pravlik & Millian* (EOM), DCCA No. 21-CV-543
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(4) (deliberative process).
- c. Disposition: The case is on appeal of the Superior Court's order to produce and publish the requested documents. It is currently in the briefing stage.
- d. Costs Assessed: N/A
28. a. Case Name/ Number: *Corey Zinman v. District of Columbia* (MPD), DCCA No. 21-CV-0894
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(2) (personal privacy), D.C. Code § 2-534(a)(3)(C) (law enforcement privacy).
- c. Disposition: The District prevailed below. This case was recently appealed and is awaiting briefing.
- d. Costs Assessed: N/A
29. a. Case Name/ Number: *Tormell Dubose v. District of Columbia* (DOH), DCCA No. 19-CV-1239
- b. Exemption(s) Claimed: None.
- c. Disposition: The District prevailed below. The matter is fully briefed and awaiting decision in the DCCA.
- d. Costs Assessed: N/A
30. a. Case Name/ Number: *Tax Analysts v. District of Columbia* (OCFO), DCCA No. 21-CV-31
- b. Exemption(s) Claimed: D.C. Code § 2-534(a)(2) (personal privacy); D.C. Code § 2-534(a)(6)(A) (information exempt from disclosure by statute with no discretion to the court).

- c. Disposition: The District prevailed below. The matter is fully briefed and awaiting argument in the DCCA.
- d. Costs Assessed: N/A
31. a. Case Name/Number: *Friends of McMillan Park v. District of Columbia*, (DMPED), 18-CV-1199
- 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: Closed. The District produced an additional 378 documents (1601 pages) on January 13, 2017. The District filed a motion for summary judgment, which the Court granted. Plaintiff appealed. The Court of Appeals upheld summary judgment for the District as well as the denial of attorney's fees.
- d. Costs Assessed: None.