SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

PARTNERSHIP FOR CIVIL JUSTICE FUND	)	
Plaintiff,	)	**2009 CA 000748 B**
	)	**Hon. Judith N. Macaluso**
v.	)	**Calendar 9**
THE DISTRICT OF COLUMBIA	)	
Defendant.	)	

ORDER HOLDING IN ABEYANCE CROSS MOTIONS FOR SUMMARY JUDGMENT PENDING AUGMENTATION OF THE RECORD

Before the court are cross motions for summary judgment filed by plaintiff Partnership for Civil Justice Fund ("PCJF") and defendant District of Columbia ("the District") on December 18, 2009. Oppositions were filed by both parties on January 15, 2010, and thereafter both parties filed replies. For the reasons stated below, the motions are held in abeyance pending augmentation of the record and supplemental argument.

Factual and Procedural Summary

At the core of this suit is PCJF's request for documents pursuant to the District of Columbia Freedom of Information Act of 2001 ("D.C. FOIA"). D.C. FOIA identifies 12

categories of governmental information that are "specifically made public information." D.C. Code § 2-536 (a) (2001). These categories are:

> (1) The names, salaries, title, and dates of employment of all employees and officers of a public body;
> (2) Administrative staff manuals and instructions to staff that affect a member of the public;
> (3) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
> (4) Those statements of policy and interpretations of policy, acts, and rules which have been adopted by a public body;
> (5) Correspondence and materials referred to therein, by and with a public body, relating to any regulatory, supervisory, or enforcement responsibilities of the public body, whereby the public body determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;
> (6) Information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;
> (6A) 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, as well as reports on budget implementation and execution prepared by the Office of the Chief Financial Officer, including baseline budget submissions and appeals, financial status reports, and strategic plans and performance-based budget submissions;
> (7) The minutes of all proceedings of all public bodies;
> (8) All names and mailing addresses of absentee real property owners and their agents;
> (8A) All pending applications for building permits and authorized building permits, including the permit file;
> (9) Copies of all records, regardless of form or format, which have been released to any person under this chapter and which, because of the nature of their subject matter, the public body determines have become or are likely to become the subject of subsequent requests for substantially the same records; and
> (10) A general index of the records referred to in this subsection, unless the materials are promptly published and copies offered for sale.

Id. D.C. FOIA further mandates that, for records made public by the act and "created on or after November 1, 2001, each public body shall make records available on the Internet, or . . . . by other electronic means." D.C. Code § 2-536 (b) (2001).

PCJF is a non-profit legal and educational organization which "seeks to ensure constitutional accountability within police practices." (Comp., 4). On September 29, 2008, PCJF requested that the District of Columbia Metropolitan Police Department ("MPD") comply with D.C. FOIA and make public "copies of all MPD staff manuals and instructions, including all general orders, all special orders, all Departmental directives and statements of policy." *Id.* at 5. PCJF also requested "a general index of all MPD records required to be made public." *Id.* PCJF did not receive a response from the District[1] and repeated its original request on October 30, 2008. On November 13, PCJF received a letter from the District acknowledging receipt of the request, but did not receive a more substantive response.

On February 5, 2009, PCJF filed "Complaint for Injunctive and Declaratory Relief to Cause D.C. Metropolitan Police Department to Disclose Departmental Policies and Procedures Made Public Under the D.C. Freedom of Information Act" against the District of Columbia. The complaint contained two counts: (1) failure to produce public records in accordance with D.C. FOIA; and (2) failure to maintain and publish public records on the Internet, as required by statute in order to maintain public openness and accountability pursuant to D.C. FOIA. On May 4, the District filed an answer to the complaint and a motion to dismiss the second count. On June 1, PCJF filed a motion for partial judgment on the pleadings. On September 22, this court denied the District's motion to dismiss and held in abeyance PCJF's motion for partial judgment on the pleadings. The instant motions followed.

Discussion

At the outset, the court notes that the District of Columbia Court of Appeals has consistently recognized the similarity between D.C. FOIA and the federal Freedom of

[1] MPD is an agency within the District and is legally represented by the District; this court will refer to defendant and defendant's agency as "the District" for purposes of simplification.

Information Act. *See e.g., Doe v. District of Columbia Dep't of Metro. Police*, 948 A.2d 1210, 1220-21 (D.C. 2008) ("As we have previously noted, many of the provisions of the District FOIA parallel those in the federal statute"); *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521 (D.C. 1989). Because of the statutes' similarity, the District of Columbia Court of Appeals has treated federal case law interpreting the federal FOIA as persuasive authority with respect to D.C. FOIA. *Washington Post*, 560 A.2d at 521 n.5.

I. Standard for Summary Judgment

To prevail on a motion for summary judgment, the moving party must demonstrate, based on the pleadings, discovery, and any affidavits or other materials submitted, that there is no genuine issue with respect to any material fact in dispute and that the movant is therefore entitled to judgment as a matter of law. *Grant v. May Dep't Stores Co.*, 786 A.2d 580, 583 (D.C. 2001); Super. Ct. Civ. R. 56 (c). A trial court considering a motion for summary judgment must view the pleadings, discovery responses, and affidavits or other materials in the light most favorable to the non-movant and may grant the motion only if a reasonable jury could not find for the non-movant as a matter of law. *Grant*, 786 A.2d at 583.

For an agency involved in a FOIA suit to succeed on a motion for summary judgment, the agency must demonstrate that it conducted a "search reasonably calculated to uncover all relevant documents." *Weisberg v. Dep't of Justice (I)*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1350-51 (D.C. Cir. 1983). The issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate. *Perry v. Block*, 221 U.S. App. D.C. 347, 684 F.2d 121, 128 (D.C. Cir. 1982). The adequacy of the search is judged by a standard of reasonableness and is decided on a fact-sensitive basis. *Weisberg (I)*, 705 F.2d at 1351.

II. Count I – Failure to Produce Public Records in Accordance with the D.C. FOIA

Both sides agree that the District performed a document search and produced requested departmental materials. The dispute between the parties centers around the adequacy of the search and the content of the records that have not been produced. The District maintains that it conducted a robust search for documents responsive to the FOIA request and that the withheld documents are properly exempt from disclosure. PCJF contends that the District failed to perform an adequate search for responsive documents and has not sufficiently justified the claimed exemptions.

A. Adequacy of MPD's Search

Under D.C. FOIA, government agencies responding to a request for records shall "make reasonable efforts to search for the records in electronic form or format, except when the efforts would significantly interfere with the operation of the public body's automated information system." D.C. Code § 2-532 (a-2) (2001). Federal cases dealing with FOIA matters establish that "the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. United States Dep't of the Army*, 287 U.S. App. D.C. 126, 137, 920 F.2d 57, 68 (1990).

To show this good faith effort, agencies must describe the method and scope of the search, typically in the form of an affidavit. In the 2008 case of *Doe v. District of Columbia Dep't of Metro. Police*, the District of Columbia Court of Appeals set forth the requirements of such an affidavit:

> It is not enough for an agency affidavit to state that "a search was initiated of the Department record system most likely to contain information which had been requested . . . ." [*Ogelsby*, 920 F.2d at 68]. Rather, the agency affidavit in support of a motion for

> summary judgment must show "with reasonable detail, that the search method . . . was reasonably calculated to uncover all relevant documents" and must "identify the terms searched or explain how the search was conducted." *Id*. "A reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched, is necessary to afford a FOIA requester an opportunity to challenge the adequacy of the search and to allow the . . . court to determine if the search was adequate in order to grant summary judgment." *Id* . . . . And, "[a]t the very least, [the agency is] required to explain in its affidavit that no other record system was likely to produce responsive documents." [*Id.*]

Doe, 948 A.2d at 1220-21.

In an affidavit submitted to the court by the District, Polly Hanson, Executive Director of the Strategic Services Bureau of the MPD, testifies to the search performed by the District in response to PCJF's document request. Ms. Hanson states that responsibility for the search was assigned to MPD's Strategic Services Bureau, Policy and Standards Division, Policy Development Branch ("the Branch"). Def. Mot. for Sum. Judg., Exhibit 1, Declaration of Polly Hanson ("Hanson Decl."), ¶ 5. The Branch is responsible "for administratively organizing, publishing, archiving, disposing of, and categorizing of directives and/or statements of policy." *Id.* Ms. Hanson also states that MPD Program Manager Denise Pearson "was tasked to provide all Departmental directives and all statements of policy, as well as a general index of all MPD records required to be made public."[2] *Id.* Furthermore, Ms. Hanson avers that the District "coordinated a robust, systemized search to locate documents responsive to the request" and that "MPD records systems likely to contain responsive materials were searched." Hanson Decl. ¶ 4, ¶ 7.

[2] In an apparent typographical error, Ms. Hanson refers to documents "required to be made public pursuant to D.C. Official Code § 5-536 (a) (2001), instead of § 2-536 (a).

In describing the search, Ms. Hanson provides no detail beyond these conclusory statements. There are no search terms listed. There is no indication of whether the search was computer-generated or performed by employees. There is no description of how the search efforts were "reasonably calculated" to produce the responsive documents. Indeed, Ms. Hanson's description of the search is, on its face, narrower than PCJF's request. There is no explanation of why no other record system would be likely to have responsive documents. In short, Ms. Hanson's affidavit fails to describe the search with sufficient detail for the court to evaluate the adequacy of the methods used. For this reason, the court will not order summary judgment in the District's favor, but rather, will order the District to submit a more detailed explanation of the search performed.

1. Mass Demonstration Manual

Related to the overall adequacy of the District's search is the issue of one particular staff manual. D.C. FOIA requires production of staff manuals "that affect a member of the public." D.C. Code § 2-536(a)(2). The "Standard Operating Procedures for Mass Demonstrations, Response to Civil Disturbances & Prisoner Processing" ("the Mass Demonstration Manual" or "the Manual") is undisputedly a responsive document. The District did not produce the Mass Demonstration Manual in response to the search; nor was it included in the list of exempted documents. According to PCJF, the fact that the Manual was not in the original production of documents suggests that other, similarly responsive documents may remain undiscovered by the District's search and thus shows the inadequacy of the search method. PCJF knew of the Mass Demonstration Manual's existence because of prior litigation against the District. In November 2009, the District informed the PCJF that the Mass Demonstration Manual was the only staff

manual that qualified as a responsive document, but did not produce it because PCJF already possessed it. In January 2010, the District produced the manual in question to PCJF.

There is no doubt that the District's response with regard to the Mass Demonstration Manual was not as timely as it could have been. But, "a lack of timeliness does not preclude summary judgment for an agency in a FOIA case." *Landmark Legal Foundation v. E.P.A.*, 272 F. Supp. 2d 59, 62 (D.D.C. 2003). Indeed, "the only question for summary judgment is whether the agency finally conducted a reasonable search, and whether its withholdings are justified. When exactly a reasonable search was conducted is irrelevant." *Id.* Therefore, this court does not find the timeliness of the manual's production a dispositive issue.

PCJF correctly argues, however, that the District's production of the Manual calls into question the adequacy of the search. If an agency discovers a record that indicates other responsive documents exist, it is obligated to pursue a further search in light of that discovery. *Campbell v. Dep't of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998); *Ctr. For Nat'l Sec. Studies v. Dep't of Justice*, 215 F. Supp.2d 94, 110 (D.D.C. 2002). In keeping with its broad, vague style, Ms. Hanson's affidavit does not specifically address whether a supplemental search was undertaken or not. The District is required by this order to address with specificity whether any additional search was conducted after the discovery of the Mass Demonstration Manual and, if so, what methods were used.

B. Adequacy of the *Vaughn* Index and Justification for Exemptions

Once a search has been conducted, the agency is obligated to produce responsive documents. D.C. Code § 2-532 (2009). However, the D.C. FOIA allows for a number of exemptions to the general rule of production. D.C. Code § 2-534 (2009). If an agency withholds information, then the agency has the burden of justifying the non-disclosure. *U.S. Dep't of*

Justice v. Reporters Comm. of Freedom of Press, 489 U.S. 749, 755 (1989). Agencies bear their burden by describing the withheld information and explaining why it falls under the claimed exemption. *Summers v. U.S. Dep't of Justice*, 140 F.3d 1077, 1080 (D.C. Cir. 1998). In response to a FOIA request, agencies often submit a "*Vaughn* Index," which describes the materials withheld and the justification for non-disclosures. *Miller v. U.S. Dep't of State*, 779 F.2d 1378, 1383 (8th Cir. 1985); *Vaughn v. Rosen*, 484 F.2d 820, 828 (D.C. Cir. 1973). Although agency use of the *Vaughn* Index format is widespread, it is not essential, so long as the agency affidavit is detailed enough to support the claimed exemption. *Minier v. Cent. Intelligence Agency*, 88 F.3d 796, 803-04 (9th Cir. 1996).

The District withheld certain responsive documents pursuant to D.C. Code § 2-534 (a)(2), which exempts from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of privacy"; and D.C. Code § 2-534 (e), which affirms "[t]he deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege" as incorporated within "[i]nter-agency or intra-agency memorandums or letters." The District claims that documents exempted pursuant to this latter provision of the D.C. Code fall within the "law enforcement privilege" because they contain "sensitive information regarding the law enforcement techniques, tactics, and procedures, including investigatory tactics, used by MPD in the performance of its law enforcement duties." Hanson Decl. ¶ 13.

The District submitted a *Vaughn* Index ("the Index") along with Ms. Hanson's affidavit. The Index submitted is a typed list of titles[3] of MPD documents with non-disclosed documents

[3] Ms. Hanson's affidavit states that the Index contains "descriptive titles," but this is not always the case. Hanson Decl. ¶ 10. For example, the Index does not describe the subject addressed in the exempted document titled "SO-86-29 (Amendment to General Order 307.1)." *Vaughn* Index, 12.

bracketed and identified by a handwritten phrase in the margins: "Exempt pursuant to [the applicable D.C. Code section]." Def. Mot. for Sum. Judg., Exhibit 1 to Declaration of Polly Hanson, *Vaughn* Index. Ms. Hanson's affidavit offers a very generalized additional description of the withheld documents. She states that all documents exempted by D.C. Code § 2-534 (a)(2) are "lists of MPD officers that are eligible for promotion or selection to different positions within MPD" and that all documents exempted by D.C. Code § 2-534 (e) fall under the law enforcement privilege. Hanson Decl. ¶ ¶ 12, 13. None of the withheld documents is described or explained on an individual basis.

The Index also brackets and identifies some documents as "Training Bulletins," without further information provided in the Index or Ms. Hanson's affidavit. There appears to be a dispute between the parties with respect to these bulletins. In its FOIA request, PCJF asked the District to make public "copies of all MPD staff manuals and instructions, including all general orders, all special orders, all Departmental directives and statements of policy," and D.C. FOIA requires production of staff manuals "that affect a member of the public." Comp., 4, D.C. Code § 2-536(a)(2). In "Defendant District of Columbia's Statement of Uncontested Material Facts," the District states that it "has completed production of all records responsive to Plaintiff documents responsive to its FOIA request." Def. Mot. for Sum. Judg., Def. State. of Uncontested Mat. Facts, ¶ 7. PCJF disputes this statement, asserting that four responsive documents, each labeled as "Training Bulletin" on the Index, are being withheld. Plain. State. of Mat. Facts in Sup. of its Opp. to Def. Mot. for Sum. Judg. and Resp. to Def. State. of Uncontested Mat. Facts, ¶ 11. The District's rebuttal is that "training bulletins are not statements of policy, and therefore, non-responsive to Plaintiff's request." Def. Resp. to Plain. State. of Mat. Facts, ¶ 11.

D.C. FOIA makes public more than just statements of policy. *See* D.C. Code § 2-536(a). The District must disclose all non-exempt documents in response to PCJF's FOIA request. *Id.* Since the District neither describes the training bulletins nor provides a detailed justification for the non-disclosure, it is impossible for the court to engage in a reasonable review of the exemption.

The purpose of a *Vaughn* Index or an agency affidavit in a FOIA case is to provide the court with evidence that enables it "to make a reasoned, independent assessment of the claims of exemption." *Vaughn v. United States*, 936 F.2d 862, 867 (6th Cir. 1991).[4] Ms. Hanson's affidavit and the accompanying *Vaughn* Index do not provide the court with sufficient evidence to assess the exemption claims. The District is required by this order to submit a revised *Vaughn* Index that further describes the withheld documents and further explains the specific reason for their exemption.

1. Segregability of Exempted Information

In addition to producing all non-exempt responsive documents, agencies are obligated to provide "any reasonably segregable portion of a public record…after deletion of those portions which may be withheld from disclosure pursuant to [a statutory exemption]." D.C. Code § 2-534 (a-1)(2)(b). D.C. FOIA further mandates that "the justification for the deletion shall be explained fully in writing, and the extent of the deletion shall be indicated on the portion of the record which is made available or published, unless that indication would harm an interest protected by the exemption." *Id.*

[4] "Whether that evidence comes in the form of an *in camera* review of the actual documents, something labelled (sic) a 'Vaughn Index,' a detailed affidavit, or oral testimony cannot be decisive. The ultimate goals remain to "(1) assure that a party's right to information is not submerged beneath government obfuscation and mischaracterization, and (2) permit the court system effectively and efficiently to evaluate the factual nature of disputed information." *Vaughn*, 936 F.2d at 867.

The segregability of information is determined by an assessment of both the intelligibility of the material and the extent of the burden of editing the document. *Yeager v. Drug Enforcement Administration*, 220 U.S. App. D.C. 1, 678 F.2d 315, 322 n. 16 (D.C. Cir. 1982). If the segregable information is "inextricably intertwined with exempt portions" of a document, even the non-exempt information need not be disclosed. *Mead Data Cent., Inc. v. Dep't of the Air Force*, 184 U.S. App. D.C. 350, 566 F.2d 242, 260 (D.C. Cir. 1977). Although the agency must provide a "detailed justification" for a document's non-segregability, it need not provide so much detail that the exempt material would be effectively disclosed. *Id.* at 261.

Ms. Hanson's affidavit states that, "[i]n all cases, MPD determined that no part of [the withheld] documents could be reasonably segregated because the exempt information within the records relates and references other exempt information." Hanson Decl. ¶ 11. Furthermore, the affidavit states that the exempt records "contain sensitive information" and are "not stand alone pieces," but rather materials that should be "read, interpreted, and understood in light of" other related directives. *Id.* These conclusory statements do not enable the court to conduct a meaningful review. *See Mead*, 566 F.2d at 261 (agency is required to offer "detailed justification" to the court). The District does not indicate why entire documents had to be withheld, rather than simply portions of those documents. Additional detail is required in this area, as well.

2. Unofficial Disclosure of Withheld Information

The District invokes the law enforcement privilege for the majority of the non-disclosed documents, citing the sensitive information contained within the exempted materials. One group of such documents is "General Orders." PCJF contends that General Orders cannot be

categorically exempt because various documents within this group are posted online at a private website maintained by a former officer of MPD.

Prior disclosure of requested information into the public domain can amount to waiver of a FOIA exemption. *Founding Church of Scientology v. NSA*, 197 U.S. app. D.C. 305, 610 F.2d 824, 831-32 (D.C. Cir. 1979) (citing 5 U.S.C. § 552(b) (7)(E) (1976); *Lamont v. Dep't of Justice*, 475 F. Supp. 761 (S.D.N.Y. 1979) (exemption should not be extended routine techniques or procedures already well known to the general public). However, the source of the disclosure and the extent to which the information becomes publicly known are factors that may override such a waiver. *See Simmonds v. Dep't of Justice*, 796 F.2d 709, 712 (4th Cir. 1986). Where publicity is not "so widespread as to warrant disclosure" and the government agency is not responsible for the release of the information, the waiver may not apply. *Fisher v. U.S. Dep't of Justice*, 772 F. Supp. 7, 12 (D.D.C. 1991).[5] Additionally, even where disclosure is widespread, there is a public policy rationale for allowing the agency to nevertheless claim the exemption. *Simmonds*, 796 F.2d at 712. Agency nondisclosure after a release of information may be "proper because a disclosure from an official source of information previously released by an unofficial source would confirm the unofficial information and therefore cause harm to third parties." *Fisher*, 772 F.Supp. at 12..

Here, the General Orders were posted by a former police officer on his firm's website. Both parties agree that this disclosure was unofficial and made on a private, third-party website. Neither party has argued to the court whether the release of the information was widespread. Furthermore, since the agency's claim of exemption was not adequately described or justified, the court is not able to determine whether nondisclosure is appropriate to prevent harm. The

[5] The quoted case gives no instructions or factors to consider for determining what is "so widespread as to warrant disclosure." *Fisher*, 772 F. Supp. at 12.

District is ordered to address with specificity the General Orders in question in the revised description and explanation of the withheld documents.

III. Count II – Failure to Maintain and Publish Public Records on the Internet

The second count of PCJF's complaint asserts a failure to comply with D.C. Code § 2-536 (b), which states, "For records created on or after November 1, 2001, each public body shall make records [made public by D.C.FOIA] available on the Internet or, if a website has not been established by the public body, by other electronic means." In earlier motions, the District and PCJF argued whether PCJF had standing to assert this count. In its order of September 22, 2009, this court held that PCJF has standing to bring this cause of action, relying on *District of Columbia v. Sierra Club*, 670 A.2d 354 (D.C. 1996). The District, in its motion for summary judgment, repeats its argument that PCJF lacks standing to seek relief under Count II. The court stands by its order of September 22.

Turning to the substantive claim PCJF brings against the District, the question before the court is whether the District's electronic publications constitute compliance with the statute. Both parties agree that the District has posted on its website some documents made public by D.C. FOIA. According to Ms. Hanson's affidavit, there are 115 General Orders and Standard Operation Procedures posted online, MPD is "actively complying" with the internet publication provision of the statute, and the agency "will continue to post materials" made public by D.C. FOIA. Hanson Decl. ¶ 18, 19. PCJF maintains that the District's online postings are "selective and incomplete" and do not, therefore, comply with the statutory requirements for internet publication. PCJF's Opp. to District's Motion for Sum. Judg., 30.

The issue here is largely one of timing. Ms. Hanson's affidavit states that "MPD is actively complying" with the law, which implies that the process is "incomplete," just as PCJF

contends. It is for this court to determine whether active, but incomplete, compliance on the part of the agency may, as a matter of law, be considered a violation of the statute. The first guide in such a situation must be the plain language of the statute itself. In this case, however, the language of the statute does not mention a timeliness requirement for compliance. D.C. Code § 2-536 (b).

As a general rule, there is no mandatory time period for agency compliance with a statutory obligation "unless [the statute] both expressly requires an agency or public official to act within a particular time period and specifies a consequence for failure to comply with the provision." *Thomas v. Barry*, 729 F.2d 1469, 1470 n.5 (D.C. Cir. 1984) (quoting *Fort Worth National Corp. v. Federal Savings and Loan Ins. Corp.*, 469 F.2d 27, 58 (5th Cir. 1972)). The United States District Court of Appeals for the District of Columbia has held on multiple occasions that an untimely response on the part of an agency is not a determinative factor in a FOIA case. *See, e.g., Tijerina v. Walters,* 261 U.S. App. D.C. 301, 821 F.2d 789, 799 (D.C. Cir. 1987) *Perry v. Block*, 221 U.S. App. D.C. 347, 684 F.2d 121, 125 (D.C. Cir. 1982); *Landmark Legal Foundation v. Envtl. Prot. Agency*, 272 F. Supp. 2d 59 (D.D.C. 2003); *Hornbostel v. U.S. Dep't of Interior*, 305 F. Supp. 2d 21, 28 (D.D.C. 2003). Therefore, the court declines to decide the issue of the agency's electronic publication on the basis of timeliness. The question of substantive compliance is one of fact, and should be reserved for the fact-finder at trial.

IV. PCJF's Request for Reasonable Fees and Costs

PCJF seeks attorneys' fees and costs. Under D.C. FOIA, "If a person seeking the right to inspect or to receive a copy of a public records prevails in whole or in part in [a suit for declaratory or injunctive relief before the Superior Court for the District of Columbia]…he or

she may be awarded reasonable attorney fees and other costs of litigation." D.C. Code § 2-537 (c). PCJF's request is premature.

Conclusion

For the reasons stated above, this court finds that both parties are denied summary judgment.

ACCORINDGLY, it is hereby this 22nd day of February 2010,

ORDERED, that both motions for summary judgment are HELD IN ABEYANCE; and it is further

ORDERED, that the District of Columbia shall have until March 26, 2010, to submit to this court a revised description and explanation of the search methods used to comply with the FOIA request; and it is further

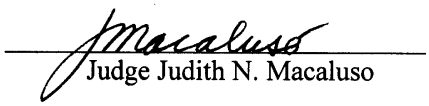
ORDERED, that the District of Columbia have until March 26, 2010 to submit to this court a revised description and explanation of the documents withheld from production pursuant to statutory exemptions; and it is further

ORDERED, that the District of Columbia have until March 26, 2010 to submit to this court a revised explanation of the segrability or non-segrability of the withheld documents; and it is further

ORDERED, that the both parties shall have until April 23, 2010 to file revisions or supplementations to their motions for summary judgment; and it is further

ORDERED, that both parties shall have until May 14, 2010, to file an opposition to the other side's motion for summary judgment; and it is further

ORDERED, that the parties shall not file a reply without leave of court.



(Signed in Chambers)

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