

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



January 22, 2014

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

Dear Chairman Mendelson:

Pursuant to the District of Columbia Freedom of Information Act ("DC FOIA"), D.C. Official Code § 2-531 et seq. (2001), as amended, enclosed is a listing of the lawsuits which were filed pursuant to the DC FOIA, during fiscal year 2013 and defended by the Office of the Attorney General for the District of Columbia ("OAG"). I have also included the disposition of those cases which were filed during fiscal year 2012 or earlier but not resolved at the time OAG's fiscal year 2012 report was submitted to the Council of the District of Columbia. To the extent a DC FOIA lawsuit was filed against a public body for which the OAG does not provide legal representation, such a case would not be reflected in this report.

The report covers the period encompassing October 1, 2012 through September 30, 2013, and contains the data responsive to the annual reporting requirements mandated by D.C. Official Code § 2-538(c), including the following:

1. A listing of the number of cases 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).

If you have any questions or concerns regarding this report, please contact Victor Bonett, Legislative Affairs and FOIA Officer for the Office of the Attorney General for the District of Columbia, at (202) 724-5562 or by electronic mail at victor.bonett@dc.gov.

Sincerely,

Irvin B. Nathan
Attorney General for the District of Columbia

Enclosure

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



OFFICE OF THE ATTORNEY GENERAL'S FISCAL YEAR 2013
FREEDOM OF INFORMATION ACT LITIGATION REPORT
(October 1, 2012 through September 30, 2013)

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. A listing of the number of cases 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).

THE PUBLIC INTEREST DIVISION (PID) EQUITY SECTION

1. a. Case Name/Number: *Jacobson v. D.C.* (OAG and MPD), 2013 CA 3283
b. Exemptions Claimed: D.C. Official Code § 2-534(a)(2) (personal privacy); D.C. Official Code § 2-534(a)(3)(c) (personal privacy in the context of law enforcement activities); D.C. Official Code § 2-534(a)(4) (documents subject to a privilege)
c. Disposition of Case: District's motion to dismiss pending
d. Costs Assessed: None, to date

2. a. Case Name/Number: *Leopold v. D.C.* (MPD), 2013 CA 4665 B
b. Exemptions Claimed: None
c. Disposition of Case: District's Motion to Dismiss and Plaintiff's Cross-Motion for Partial Summary Judgment are pending
d. Costs Assessed: None, to date

3. a. Case Name/Number: *Fraternal Order of Police v. D.C.* (OAG, MPD, OCFO), 2013 CA 3417
- b. Exemptions Claimed: D.C. Official Code § 2-534(a)(4) (documents subject to a privilege), D.C. Official Code § 2-534(a)(2) (personal privacy)
- c. Disposition of Case: In discovery
- d. Costs Assessed: None, to date
4. a. Case Name/Number: Fraternal Order of Police, Metropolitan Police Labor Committee v. District of Columbia (MPD) Civ. No. 11-7549
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2) – Personal Privacy
- c. Disposition of Case: Open; summary judgment granted in favor of Plaintiff; settlement negotiation of attorneys’ fees (only remaining issue) currently in progress.
- d. Cost Assessed: No fees assessed to date.
5. a. Case Name/Number: Fraternal Order of Police, Metropolitan Police Labor Committee, DC Police Union v. District of Columbia (MPD) Civ. No. 12- 2292
- b. Exemption(s) Claimed: None
- c. Disposition of Case: Dismissed. Summary Judgment granted to the District.
- d. Costs assessed: No fees assessed.
6. a. Case Name/Number: McMillan Park Committee v. District of Columbia (DMPED) Civ. No. 10-1820, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(1) – Commercial Information
D.C. Official Code §2-534(a)(4) – Common Law Privileges
- c. Disposition of Case: Summary Judgment granted, in part, to plaintiffs.
- d. Costs Assessed: The parties reached settlement in the amount of \$58,500.00.

7. a. Case Name/Number: Fraternal Order of Police v. District of Columbia (MPD)
Civ. No. 09-6777
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2) - Personal Privacy
D.C. Official Code §2-534(a)(3) - Law Enforcement
D.C. Official Code §2-534(a)(4) - Common Law Privileges
D.C. Official Code §2-534(a)(6) - Statutory Exemption
- c. Disposition of Case: Motions resolved, exemptions upheld; case closed as of 9/30/2013
- d. Costs assessed: Motion for attorneys' fees denied
8. a. Case Name/Number: Fraternal Order of Police v. District of Columbia (MPD)
Civ. No. 09-6778
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2) - Personal Privacy
D.C. Official Code §2-534(a)(4) - Common Law Privileges
- c. Disposition of Case: Judgment for the Plaintiff.
- d. Costs assessed: Motion for reconsideration denied in part, attorney's fees settled for \$8,423.00.
9. a. Case Name/Number: Fraternal Order of Police v. District of Columbia (MPD)
Civ. No. 12-5309
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2) - Personal Privacy
- c. Disposition of Case: Settled, documents produced
- d. Costs assessed: Attorney's fees settled for \$1,202.79.
10. a. Case Name/Number: Fraternal Order of Police, Metropolitan Police Labor Committee v. District of Columbia (MPD) Civ. No. 12-4221
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a) (2)) – Personal Privacy
- c. Disposition of Case: Summary judgment granted in favor of the Defendant.
- d. Cost Assessed: No fees assessed.

11. a. Case Name/Number: Fraternal Order of Police, Metropolitan Labor Committee v. District of Columbia (MPD), Civ. No. 12-4125
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2) – Personal Privacy
- c. Disposition of Case: Summary judgment granted in favor of the District
- d. Cost Assessed: No fee assessed
12. a. Case name/number: Fraternal Order of Police v. District of Columbia (MPD) Civ. No. 11-6983
- b. Exemption claimed: None
- c. Disposition of case: Declaratory judgment granted to Plaintiff that District’s response was untimely, but motion for attorneys’ fees denied.
- d. Costs assessed: None.
13. a. Case Name/Number: Fraternal Order of Police, Metropolitan Police Labor Committee v. District of Columbia (MPD) Civ. No. 10-8161
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a) (2) – Personal Privacy
D.C. Official Code §2-534(a)(3) - Law Enforcement
D.C. Official Code §2-534(a)(4) - Common Law Privileges
D.C. Official Code §2-534(a)(6) - Statutory Exemption
- c. Disposition of Case: Closed; Summary judgment granted in favor of Plaintiff, but Plaintiffs’ fee petition denied.
- d. Costs Assessed: No fees assessed to date.
14. a. Case Name/Number: Fraternal Order of Police, Metropolitan Labor Committee v. District of Columbia (MPD) Civ. No 08-5557
- b. Exemption(s) Claimed: D.C. Official Code § 2-534(a)(2) – Unwarranted invasion of personal privacy
D.C. Official Code § 2-534(e) – Attorney work product material

- c. Disposition of Case: Summary judgment granted in favor of Plaintiff on some records and in favor of the District on others; Court of appeals modified summary judgment and required the District to produce records consistent with its opinion; currently open on remand in the Superior Court
- d. Costs Assessed: No fees assessed to date.
15. a. Case Name/Number: Fraternal Order of Police, Metropolitan Labor Committee v. District of Columbia (MPD)
Civ. No. 08-8104
- b. Exemption(s) Claimed: D.C. Official Code § 2-534(a)(2) – Unwarranted invasion of personal privacy
- c. Disposition of Case: Summary judgment granted in favor of Plaintiff; Court of Appeals ruled in favor of the District on the contested redactions
- d. Costs Assessed: No fees assessed to date.
16. a. Case Name/Number: Fraternal Order of Police, Metropolitan Labor Committee v. District of Columbia (MPD) Civ. No. 09-618
- b. Exemption(s) Claimed: D.C. Official Code § 2-534(a)(2) – Unwarranted invasion of personal privacy
- c. Disposition of Case: Superior Court found that disciplinary files appropriately redacted; FOP has appealed
- d. Costs Assessed: No fees assessed to date.
17. a. Case Name/Number: Fraternal Order of Police, Metropolitan Labor Committee v. District of Columbia (MPD) Civ. No. 12-4123
- b. Exemption(s) Claimed: D.C. Official Code § 2-534(a)(2) – Unwarranted invasion of personal privacy

D.C. Official Code § 2-534(e) – Attorney/client privilege, attorney work product, and law enforcement material
- c. Disposition of Case: Pending before Superior Court
- d. Costs Assessed: No fees assessed to date

CIVIL LITIGATION DIVISION

1. a. Case Name/Number: Fraternal Order of Police v. District of Columbia (MPD) Civ. No. 05-7011, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2) – Personal Privacy; D.C. Official Code § 2-534 (a)(3)(A)(i) – Law Enforcement Investigatory Records; D.C. Official Code §2-534(b) – Non-privileged information not reasonably segregable; D.C. Official Code § 2-532(c)-the FOP’s request did not reasonably describe requested documents.
- c. Disposition of Case: This matter was fully litigated in the Superior Court, appealed and then remanded for further proceedings. Plaintiff requested copies of all Disciplinary Review Board documents and EEO documents for all investigations of officers within a five year period. The court initially issued an order requiring production which was appealed, and on remand we renewed our argument that there was confidential information included in the documents that could not be redacted without rendering the documents unusable. We also argued that if the District is required to produce the documents, FOP should be required to bear the costs of pay the cost of production.
- d. Costs Assessed: The FOP was ordered to pay \$1.58 per page for the District’s cost of production. The District is producing approximately 4000 pages of documents per month consistent with the Court’s order. The FOP filed a fee petition requesting \$120,763.26 in fees. The Court granted the petition but only awarded the FOP a total of \$53,544.14 in fees, representing an approximately fifty percent reduction of the FOP’s original request.

2. a. Case Name/Number: Fraternal Order of Police v. District of Columbia (MPD); Civ. No. 11-6033, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2) – Personal Privacy; D.C. Official Code §2-534(a)(4) – Deliberative Process, Law Enforcement, Attorney-Client, Attorney Work Product Privileges and National Security Interests; D.C. Official Code §2-534(a)(6) – Statutory Exemption

- c. Disposition of Case: Cross motions for summary judgment denied. Court then conducted in camera review and upheld the agency's asserted exemptions. The parties' dispute on whether the FOP had a right to the search terms of the agency's second search, given the District's argument that the case was moot is now resolved. The FOP filed a petition for attorney fees which remains pending before the court.
- d. Costs Assessed: None
3. a. Case Name/Number: Fraternal Order of Police v. District of Columbia (MPD), Civ. No. 10-8160, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code § 2-534(a)(2) – Personal Privacy
- c. Disposition of Case: Summary judgment granted 11/6/12. FOP moved for reconsideration on 11/20/12. The motion was denied.
- d. Costs Assessed: None
4. a. Case Name/Number: Washington v. District of Columbia (DCPS), Civ. No. 10-0741, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Code § 2-534 (a)(2) –Personal Privacy; D.C. Code § 2-534 (a)(4) – Deliberative Process, Attorney-Client, Attorney Work Product Privileges; D.C. Code § 2-534 (a)(6), Statutory Exemption
- c. Disposition of Case: Plaintiff alleged that DCPS failed timely to respond to two FOIA requests for all records in DCPS's possession relating to DCPS's compliance with the Final Order in Washington v. DCPS, OEA Matter 1601-0021-08. The Superior Court entered a declaratory judgment that DCPS violated the FOIA by failing to respond to Plaintiff's FOIA requests within the time period prescribed by statute. The parties settled plaintiff's fee request for \$5000.00.
- d. Costs Assessed: None.
5. a. Case Name/Number: Frost v. District of Columbia (MPD); Civ. No. 12-6863, District of Columbia Superior Court
- b. Exemption(s) Claimed: None
- c. Disposition of Case: Dismissed by Court.

- d. Costs Assessed: None
6. a. Case Name/Number: Brookland Heartbeat v. District of Columbia; Civ. No. 12-806, District of Columbia Superior Court
- b. Exemptions Claimed: D.C. Official Code § 2-534(e)(4) - Deliberative process privilege D.C. Official Code §2-534(a)(3)(A) – Ongoing Criminal Investigation
- c. Disposition of Case: District’s summary judgment motion granted in part and denied in part. Appeal filed, however, the case was settled and the appeal was withdrawn. This case is now closed.
- d. Costs Assessed: Settled for \$25,000.
7. a. Case Name/Number: Brookland Heartbeat v. District of Columbia; Civ. No. 12-6473, District of Columbia Superior Court
- b. Exemptions Claimed: D.C. Official Code § 2-534(e)(4) – Deliberative process privilege; D.C. Official Code §2-534(a)(1) Trade Secrets
- c. Disposition of Case: District’s and plaintiff’s motions for summary judgment pending
- d. Costs Assessed: None, to date
8. a. Case Name/Number: Frankel v. D.C. Office of the Deputy Mayor for Planning and Economic Development (EOM), Civ. No. 10-312 B District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(4) - Common Law Privileges
- c. Disposition of Case: Plaintiff’s motion for summary judgment granted. Plaintiff’s motion for attorney’s fees granted in part and denied in part. This case is now closed.
- d. Costs Assessed: \$21,110.46
9. a. Case Name/Number: FOP v. District of Columbia (MPD) Civ. No. 11-6029 B, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(c)(3) – Investigative Privilege

- c. Disposition of Case: The District's Motion for Summary Judgment was denied; the Plaintiff's Motion for Summary Judgment is pending.
- d. Costs Assessed: No fees assessed to date
10. a. Case Name/Number: Sylvia Johnson v. District of Columbia (DHS OGC) Civ. No. 08-6473, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(e), D.C. Official Code §2-534(a)(4) Deliberative process, Attorney client, Work product
- c. Disposition of Case: Summary Judgment granted to defendants 08/23/2013
- d. Costs Assessed: None
11. a. Case Name/Number: Fraternal Order of Police v. District of Columbia (MPD) Civ. No. 11-9644, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(e), D.C. Official Code §2-534(a)(4) - Deliberative process Attorney client Work product
- c. Disposition of Case: Pending
- d. Costs Assessed: None
12. a. Case Name/Number: Peter Tucker v. District of Columbia (DCTC) Civ. No. 12-0183, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(e), D.C. Official Code §2-534(a)(4) Deliberative process Attorney client Work product
- c. Disposition of Case: Settled and closed 02/01/2013
- d. Costs Assessed: \$200
13. a. Case Name/Number: Abigail Padou v. District of Columbia (DCRA) Civ. No. 11-4254, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(e), D.C. Official Code §2-534(a)(4) Deliberative process Attorney client Work product

- c. Disposition of Case: Dismissed 10/12/2012
- d. Costs Assessed: \$300
14. a. Case Name/Number: Fraternal Order of Police v. District of Columbia (MPD)
Civ. No. 12-6442, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2) – Personal Privacy
- c. Disposition of Case: Remains pending
- d. Costs Assessed: None to date
15. a. Case Name/Number: Fraternal Order of Police v. District of Columbia (MPD)
Civ. No. 12-6443, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2) and (a)(3) – Personal Privacy
- c. Disposition of Case: Remains pending
- d. Costs Assessed: None to date
16. a. Case Name/Number: Fraternal Order of Police v. District of Columbia (MPD)
Civ. No: 10-006565 B
- b. Exemption Claimed: None Listed.
- c. Disposition of Case: Settled.
- d. Costs Assessed: None.
17. a. Case Name/Number: Fraternal Order of Police v. District of Columbia Civ. No.
10-6566
- b. Exemption Claimed: D.C. Official Code §2-534(a)(4) - Deliberative process
- c. Disposition of Case: Plaintiff appealed.
- d. Costs Assessed: No fees assessed to date.
18. a. Case Name/Number: Pinkney, Tracy v. MPD (MPD) Civ. No. 13-7588

b. Exemption Claimed: None. Unable to locate requested photos.
c. Disposition of Case: Case pending; complaint has not yet been answered.
d. Costs Assessed: No fees assessed to date.

19. a. Case Name/Number: Black, Dion v. DDOT (DDOT) Civ. No. 13-4262
b. Exemption Claimed: D.C. Official Code §2-534(a)(4) - Deliberative process
c. Disposition of Case: Case pending.
d. Costs Assessed: No fees will be assessed because plaintiff is pro se.

20. a. Case Name/Number: Crimmins, Connor v. ANC 5B (ANC) Civ. No. 13-4225
b. Exemption Claimed: Audio recording was not a public record subject to FOIA
c. Disposition of Case: Plaintiff's Motion for Summary Judgment granted. Motion to Show Cause pending.
d. Costs Assessed: No fees assessed to date.