



DC FOIA Appeals: Analysis and Insights

**Louis L. Neal, Jr., Chief Counsel
Office of Open Government
July 30, 2026**

Office of Open Government

The Office of Open Government is a component (along with the Office of Government Ethics) under the Board of Ethics and Government Accountability. OOG is overseen by the Director of Open Government, Niquelle M. Allen, Esq., and began operations in April of 2013.

OOG interprets and monitors compliance with:

- (1) the Open Meetings Act (the OMA), which requires that public bodies provide proper notice of, access to, and detailed records of their meetings; and
- (2) the Freedom of Information Act of 1976, which concerns the transparency and availability of public records.**

OOG provides guidance (including formal advisory opinions) to public bodies on compliance with the OMA. OOG also conducts training and outreach and can also enforce the OMA on the basis of complaints from the public and its own investigations, and as a last resort may sue public bodies in the Superior Court for injunction, declaration, and/or civil fines.

Presentation Focus:

Particular Aspects of the DC FOIA Appeals
Process

Selected Appeals Decisions from the MOLC over
the past year.



What is a D.C. FOIA appeal?



Public's right to access records held by D.C. public bodies.

***An appeal is not a second records request—it challenges an agency's denial, redactions, fee decision, failure to respond, or inadequate search.**

The objective of this presentation: Help Agency FOIA officers to recognize appealable problems and assess the best route to disclosure.





Legal and Procedural Foundation

- D.C. Code §§ 2-531–539 and 1 DCMR §§ 400–417.
- A lawful denial letter should contain: the precise exemption, factual reasoning, responsible official, and appeal notice.
- It should also explain “constructive” or deemed denial—when an agency misses its statutory deadline.

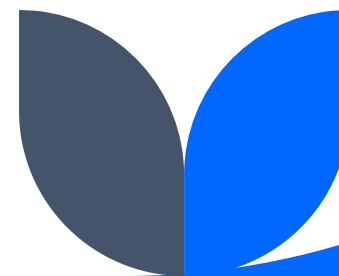


DC FOIA RECAP



Normal request-response cycle and Timeline

The normal request-response cycle for a District of Columbia (DC) FOIA request is a 15-business-day statutory window, **which can be extended by an additional 10 business days for unusual circumstances, or up to 25 business days initially if the request involves body-worn camera (BWC) footage.**



Submission and Initial Intake

Filing: Requests are submitted online via the [DC Public FOIA Portal](#) or by email, mail, or fax to the specific public body maintaining the records.

Receipt Date: The statutory clock starts the day the correct agency FOIA Officer actually receives the request.

Tracking: The agency logs the submission and assigns a tracking number.



Standard Processing Window

Initial Deadline: 15 business days (excluding weekends and legal holidays) for standard records to issue a determination response.

BWC Footage Exception: 25 business days if the request specifically targets body-worn camera recordings.

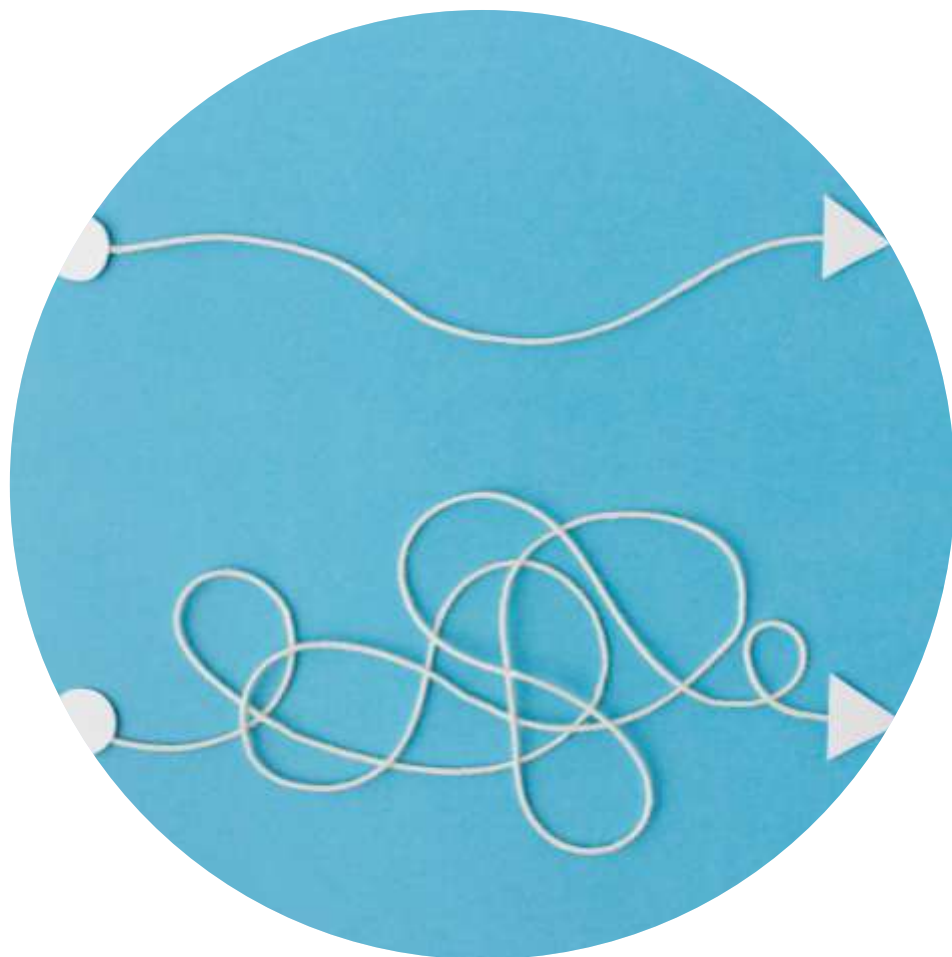
Unusual Circumstances Extension: Agencies can claim an extra **10 business days** (or 15 extra business days for BWC footage) by notifying the requester if records are voluminous, scattered, or require inter-agency consultation

Resolution and Delivery

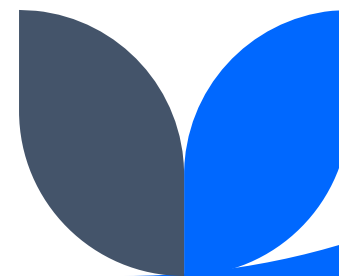
Determination: The agency provides a response letter granting/denying access, providing redacted records, or citing applicable exemptions (DC FOIA has 24 of them).

Deemed Denial / Appeal: If the agency fails to respond within the legal timeframe (including valid extensions), the request is legally considered a "deemed denial," allowing the requester to file an administrative appeal or seek judicial review.





**Now, the
appeal process
and analysis.**

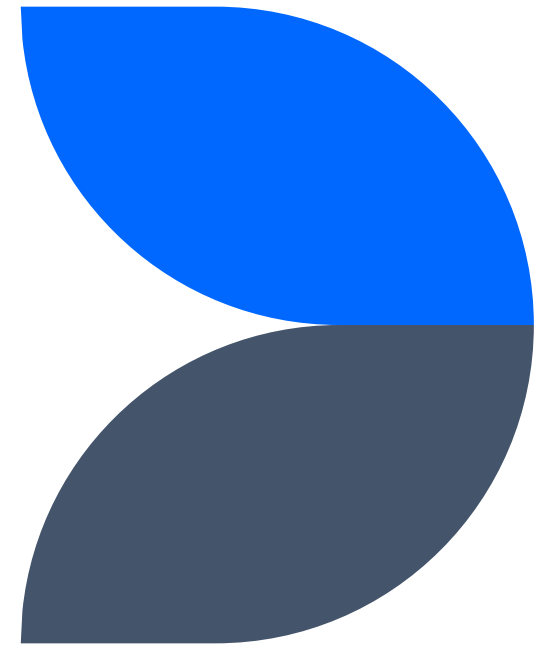


Pick a Path:

For most executive-branch/public-body records, a requester may petition the Mayor, through the Mayor's Office of Legal Counsel which handles these administrative appeals.

D.C. Council records and Office of the Attorney General (OAG) records have distinct direct-to-Superior-Court paths.

Note that the administrative appeal determination is due in writing within 10 business days under D.C. Code § 2-537.



What is the MOLC Reviewing?

Analyzing the agency decision

- (1) Compare the request to the response,
- (2) Identify every withheld category and redaction,
- (3) List every cited exemption,
- (4) Determine whether the agency explained why the exemption applies,
- (5) Ask whether nonexempt portions could be separated and released, and
- (6) Evaluate the adequacy of the agency's search.

*Review for common dispute types: “no records,” overly broad privacy redactions, law-enforcement claims, attorney-client/work-product claims, deliberative-process claims, fees, and missed deadlines.



Outcomes, Enforcement and Litigation

- Affirming the agency's denial,
 - ordering disclosure,
 - ordering a supplemental search,
 - remanding for reconsideration, or partial disclosure.
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- a suit for injunctive or declaratory relief in D.C. Superior Court.
 - In court, the public body bears the burden of supporting its withholding; the case is reviewed de novo and the court may inspect records *in camera*.
 - potential attorney fees and costs for a requester who prevails in whole or in part.



What Appeal Decisions Reveal: Recurring lessons

2026-230: Corporations do not have a privacy interest.

2026-132: When no decision can be dispatched within the applicable time limits, an agency shall nevertheless continue to process records and communicate with requester.

2026-219 - D.C. Code § 2-534(a)(3)(A)(i) (applied to withholding investigation records from enforcement agencies other than the police.

FOIA Appeal #2026-230



- Appeal regarding records related to calls for service at 734 15th Street NW from Jan. 31, 2025, to May 7, 2026.
- Initial Response:
 - Denied by OUC citing privacy concerns under D.C. Code § 2-534(a)(2)*.
 - ***“Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”**
- - ****Challenging the Denial:****
 - Argument: A private club cannot assert personal privacy under the exemption.
 - Claim: The exemption applies only to individuals, not business entities.
 - ****Adequacy of Search:**** - OUC's search was questioned regarding its thoroughness and justification for withholding records.

FOIA Appeal #2026-230(cont'd)

- **Legal Framework**

- **- **Public Policy Context:****
 - DC FOIA aims for transparency regarding government affairs.
 - Exemptions allow withholding records of a personal nature to protect privacy.
- **- **Key Precedents:****
 - Personal privacy interests do not extend to corporations. *See FCC v. AT&T, Inc.*, 562 U.S. 397, 403 (2011)
 - The distinction between personal identifying information and corporate records.
- **Adequacy of Search** – requires reasonable determination of where records might exist.





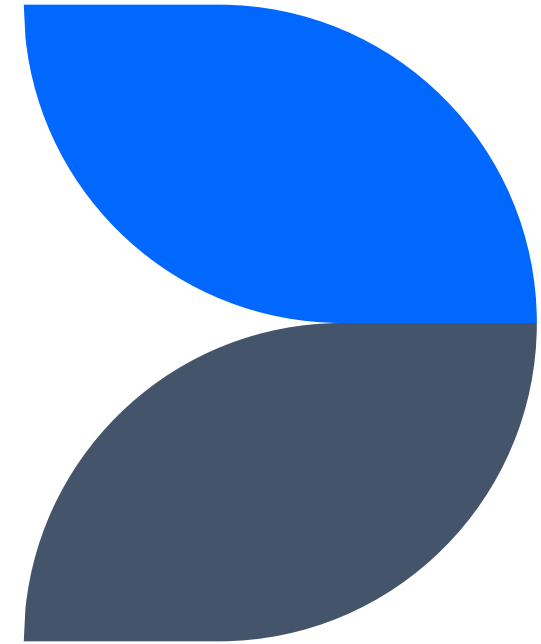
FOIA Appeal #2026-230(cont'd)

- **Conclusion and Recommendations**
- - ****Decision:****
 - Matter remanded back to OUC for further action.
 - OUC must conduct a more thorough search and disclose non-exempt records.
- ****Next Steps:****
 - OUC to provide a detailed determination letter and update on the search conducted



FOIA Appeal #2026-132

- Appeal regarding records related to a January 13, 2026 DC FOIA request to MPD which sought various records related to a particular CCN Number.
 - CCN number is a Central Complaint Number, which is a unique tracking number used by the Metropolitan Police Department (MPD) and the Office of Unified Communications (OUC).
- After providing MPD with additional information that it had requested from the requester, MPD failed to respond to the request and the requester filed an appeal with the MOLC on February 23rd.
- The MOLC granted MPD a requested extension to fulfill the requested, but MPD still failed to do so.



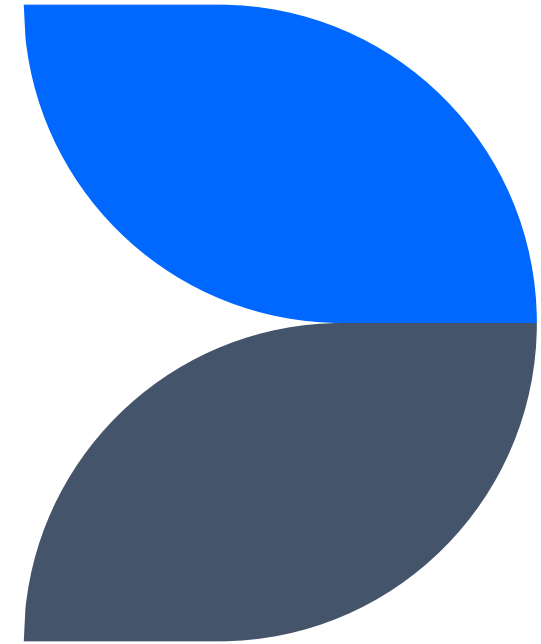
FOIA Appeal #2026-132 – (cont'd)

- Legal Framework
- 1 DCMR § 401.1 - The ultimate responsibility for responding to requests for records of an agency is vested in the agency head.
- 1 DCMR § 405.5 - When no decision can be dispatched within the applicable time limits, an agency shall nevertheless continue to process the request and inform the requester of the reason for delay, the date on which a determination may be expected and the right to treat the delay as a denial with the right to appeal.

FOIA Appeal #2026-132 – (cont'd)

- **Conclusion and Recommendations**

- **- **Decision:****
 - **Matter remanded back to MPD to comply with 1 DCMR § 405.5, if it had not already done so, with the objective of producing any non-exempt records that are responsive to your request as soon as practicable.**
- **KEY TAKEAWAY:**
- If a FOIA request cannot be answered within the statutory time deadline, the FOIA Officer should keep the requester informed about the status, the reason for delay and the expected timeline for completion. This will likely avoid any issues with the MOLC and in most cases with the requester; some requests take a lot of time to complete, being transparent can avoid or mitigate the potential consequences of litigation.
- Under 1 DCMR § 405.5 when no decision can be dispatched within the applicable time limits, an agency shall nevertheless continue to process the request and inform the requester of the reason for delay, the date on which a determination may be expected and the right to treat the delay as a denial with the right to appeal.





FOIA Appeal #2026-219

Request of Office of Government Ethics (BEGA) for Investigative materials and internal documents related to a BEGA Investigation following an EEO complaint.

- Key Areas of Requests in the appeal:
 - Preliminary investigation documentation
 - Internal communications
 - Evidence collection materials
 - Enforcement decision materials





FOIA Appeal #2026-219 (cont'd)

Agency Response and Denials

- ****Denials:****
- BEGA denied several requests and Certain documents were not available
- Exemptions cited include:
 - D.C. Code §§ 2-534(a)(3), (a)(4), (a)(6)
- ****Confidentiality:**** Some documents classified as confidential due to ongoing investigations.



FOIA Appeal #2026-219 (cont'd)

Issues Raised in the Appeal

- ****Challenged Denials:****
- Adequacy of BEGA's search for documents
- Applicability of cited exemptions
- ****Additional Allegations:****
- Requests for Mayoral intervention under the D.C. Human Rights Act
- ****Limitations:**** Some issues raised were outside the FOIA context and not addressed.



FOIA Appeal #2026-219 (cont'd)

- Legal Framework
- BEGA cited several exemptions under D.C. Code § 2-534:
- § 2-534(a)(3): Protects investigatory records compiled for law-enforcement purposes, but only if releasing them would interfere with legal proceedings, deprive someone of a fair trial, disclose a confidential source, or endanger law enforcement personnel.
- § 2-534(a)(4): Protects inter-agency or intra-agency memorandums or letters that would not be available by law to a party in litigation with the agency, which incorporates the deliberative process privilege, attorney-client privilege, and attorney work product.
- § 2-534(a)(6): Protects information that is specifically exempted from disclosure by another District or federal statute (such as student privacy under FERPA or medical records under HIPAA)



FOIA Appeal #2026-219 (cont'd)

- **Legal Framework (cont'd)**
- The adequacy of the search –
- “In determining whether an agency conducted an adequate search in response to a records request, the test is not whether documents might conceivably exist, but whether the agency’s search for responsive documents was adequate.” *See Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).
- The standard here isn’t whether documents might exist but whether the search was reasonable. BEGA clarified that they found no preliminary investigation documents since only a formal case was considered in this instance.



FOIA Appeal #2026-219 (cont'd)

- Conclusion and Final Decision
 - - ****Decision:**** Appeal denied; no additional documents to be released.
 - - ****Rationale:**** Adequate search performed by BEGA; exemptions appropriately applied.
 - - ****Next Steps:**** If dissatisfied, Requester may commence a civil action against the District of Columbia per D.C. Code § 2-537.



Questions





CONTACT INFORMATION

Niquelle M. Allen, Esq.,
Director
Niquelle.Allen@dc.gov
(202) 481-3406

Louis L. Neal, Jr., Esq.,
Chief Counsel
Louis.Neal@dc.gov
(202) 384-2945

Joan Lelma, Esq.
Attorney Advisor
Joan.lelma@dc.gov
(202) 948-3623

Anthony J. Scerbo, Esq.
Attorney Advisor
Anthony.Scerbo1@dc.gov
(202) 731-2926

Brandon W. Lewis, Esq.
Trial Attorney
Brandon.lewis@dc.gov
(202) 579-1043

Kevin Brown
IT Specialist
Kevin.Brown@dc.gov
(202) 579-3756

Kimberly Brown
Paralegal Specialist
Kimberly.brown6@dc.gov
(202) 893-3902