

Attachment 1 – Appeal of DCRA’s Response to 2015-FOIA-01284

FOIA Request

Submitted Online to <https://foia-dc.gov/palMain.aspx> 1/16/15

REQUESTOR

Alan Gambrell
1648 Argonne Place NW
Washington DC 20009
202-441-7288
gambrell@aol.com

REQUEST

Please accept this letter as a request for documents under the DC Freedom of Information Act, DC Code §§ 2-531-539.

Note that these documents include, but are not limited to, e-mails, drawings, plans, permit requests, permit approvals, telephone records, and visual voicemails regarding the building permits, issuance of a Stop Work Order on or about late November to early December 2014, and lifting of the Stop Work Order on 1636 Argonne Place, NW, Washington, DC, on or about December 19, 2014.

The permits for construction at this address are:

B1409928, issued 7/21/14
B1404813, issued 9/9/14 to 1/08/15
B1502210, issued December 19, 2014

More specifically, this request covers the data, drawings, and calculations used to determine the Floor Area Ratio (FAR) and Lot Occupancy (LOC) determinations for 1636 as follows:

- 1) Specific calculations used to arrive at LOC of 58.7% as stated in Rohan Reid's December 12, 2014 email from DCRA. Please specify the square footage considered to be part of the LOC determination and provide the zoning regulations and policies supporting the determination. (This email is included below as Attachment 1.)
- 2) Specific information used to arrive at a FAR redetermination of 2.07, which resulted in issuance of a stop work order on December 3, 2014, as stated in Rohan Reid's December 12, 2014 email from DCRA. Please provide specific floor-by-floor square footage calculations and indicate which square footage was included and excluded for arriving at FAR of 2.07. (See Attachment 1.)
- 3) Specific information used that resulted in a change in the FAR to within the 1.8 limit and subsequent lifting of the stop work order on December 18, 2014, as stated in Matthew Le Grant's December 19, 2014 email from DCRA. (This email is included below as Attachment 2.)

Board of Zoning Adjustment
District of Columbia
CASE NO.18980
EXHIBIT NO.221

- 4) Specific floor-by-floor calculations and square footage included and excluded for arriving at FAR compliance under 1.8 limit as stated by Mr Le Grant in his December 19, 2014 email. Please specific zoning regulations and policies supporting determination. (See Attachment 2.)
- 5) Specific lower level calculations, including the methodology used (perimeter wall or grade plane method), and grade to lower level ceiling distance for each perimeter, including front, rear, common wall (east), common wall (west). Please provide these for both the original plans that resulted in the December 3, 2014 Stop Work Order and the revisions that led to the lifting of that same order.

Many thanks for your assistance in this matter. Please feel free to contact me for additional information or clarifications.

Attachment 1

Email from Rohan Reid, DCRA

On Dec 12, 2014, at 4:45 PM, Reid, Rohan (DCRA) <rohan.reid@dc.gov> wrote:

Good afternoon Deepa Venkataraman, et al:

I am following up to inform you that the Office of the Zoning Administrator has concluded the review of building permit application, B1502210, and the associated plans that were submitted by the property owner and in response to the stop work order that was issued to 1636 Argonne Place NW.

This recent application and plans, as represented by the property owner, were submitted for review to demonstrate a correction in the grading of the property that was shown in error on the plans associated with the initial building permit, B1404813. Our office has determined that the information and dimensions that are provided on the revised drawings, show that there are portions of the lowest level that are classified as a cellar and as a basement. The portion of the lowest level that we determined is a basement, counts toward the Floor Area Ratio ("FAR").

The Zoning Administrator has determined that the project's proposed lot occupancy complies with the zoning regulations and does not exceed the limit of 60%. Our calculations show that lot occupancy remains at 58.7% and consistent with our initial findings. The Zoning Administrator has also determined that the proposed project continues to exceed the allowable FAR of 1.8 for the R-5-B zone and is in violation of the zoning regulations, even with a portion of the lowest level included in the FAR. Our current calculations for the revised building permit application and plans show the FAR at 2.07.

At this time the stop work order cannot be lifted without a redesign of the project such that it complies fully with the zoning regulations, or, obtaining approval from the Board of Zoning Adjustment. The property owner has been informed of this and has been asked to inform our office of how he will proceed in ensuring that the project will comply with the zoning regulations. We will continue to keep you informed of our enforcement actions.

Thank you for your patience while our office was reviewing the building permit and plans.

Regards,

Rohan Reid

Program Analyst | Office of the Zoning Administrator

Department of Consumer and Regulatory Affairs

Government of the District of Columbia

1100 4th Street, SW, Suite E340 | Washington, DC 20024

(202) 442-4648 (p) | (202) 442-4863 (f) | rohan.reid@dc.gov | www.dcr.dc.gov

Attachment 2

Email from Matthew Le Grant, DCRA

On Dec 19, 2014, at 5:25 PM, matthew.legrant@dc.gov wrote:

Concerned Neighbors of 1636 Argonne PI NW:

I wanted to update those neighboring residents who have expressed some concerns about the project, regarding my office's latest action regarding this matter.

Yesterday I received an application from the property owner for a building permit revision to change the finished grade adjacent to the front and rear of the building to establish the lower level as a cellar, so that the ceiling of that level will not be more than four (4) feet above the adjacent finished grade. After reviewing the revision drawings, I found that they comply with the Zoning Regulations. My office has approved that revision, and as a result, I conclude that the project is now compliant with the FAR limitation applicable to this property.

Furthermore, I have found that there are no further Zoning related issues with this project. I have asked DCRA's Inspection Division to lift the current Stop Work Order [SWO] so the owner may proceed both the previously authorized construction under Permit #B1404813.

Please let me know if you have any further questions.

Best Regards,

Matthew Le Grant
Zoning Administrator
Dept of Consumer and Regulatory Affairs
Government of the District of Columbia
1100 4th St SW - Room 3100
Washington, DC 20024
Phone: 202 442-4652
Email: matt.legrant@dc.gov
Web: <http://dcra.dc.gov/service/zoning-dcra>

Exhibit 2: Appeal of DCRA's Response to 2015-FOIA-01284

Mr. Gambrell:

This email responds to your Freedom of Information Act (FOIA) request, received by this office on **January 16, 2015** and assigned FOIA number **2015-FOIA-01284** in which you requested the following documentation:

Please accept this letter as a request for documents under the DC Freedom of Information Act, DC Code §§ 2-531-539. Note that these documents include, but are not limited to, e-mails, drawings, plans, permit requests, permit approvals, telephone records, and visual voicemails regarding the building permits, issuance of a Stop Work Order on or about late November to early December 2014, and lifting of the Stop Work Order on 1636 Argonne Place, NW, Washington, DC, on or about December 19, 2014. The permits for construction at this address are: B1409928, issued 7/21/14 B1404813, issued 9/9/14 to 1/08/15 B1502210, issued December 19, 2014 More specifically, this request covers the data, drawings, and calculations used to determine the Floor Area Ratio (FAR) and Lot Occupancy (LOC) determinations for 1636 as follows: 1) Specific calculations used to arrive at LOC of 58.7% as stated in Rohan Reid's December 12, 2014 email from DCRA. Please specify the square footage considered to be part of the LOC determination and provide the zoning regulations and policies supporting the determination. (This email is included below as Attachment 1.) 2) Specific information used to arrive at a FAR redetermination of 2.07, which resulted in issuance of a stop work order on December 3, 2014, as stated in Rohan Reid's December 12, 2014 email from DCRA. Please provide specific floor-by-floor square footage calculations and indicate which square footage was included and excluded for arriving at FAR of 2.07. (See Attachment 1.) 3) Specific information used that resulted in a change in the FAR to within the 1.8 limit and subsequent lifting of the stop work order on December 18, 2014, as stated in Matthew Le Grant's December 19, 2014 email from DCRA. (This email is included below as Attachment 2.) 4) Specific floor-by-floor calculations and square footage included and excluded for arriving at FAR compliance under 1.8 limit as stated by Mr Le Grant in his December 19, 2014 email. Please specific zoning regulations and policies supporting determination. (See Attachment 2.) 5) Specific lower level calculations, including the methodology used (perimeter wall or grade plane method), and grade to lower level ceiling distance for each perimeter, including front, rear, common wall (east), common wall (west). Please provide these for both the original plans that resulted in the December 3, 2014 Stop Work Order and the revisions that led to the lifting of that same order. (Date Range for Record Search: From 03/01/2014 To 01/09/2015)

Regarding your request for documentation for the above-mentioned property, a search of our records was conducted for documentation of any Stop Work Orders and related documentation for the above-mentioned property. This search of our records revealed one (1) document responsive to your request. A copy of this document – Stop Work Order – is attached to this email.

Regarding your request for “...permits, drawings, permit requests, permits approvals, plans ...”, please note that, pursuant to DC Code §2-536(a)(8A), permits and plans are all required to be made publicly available and do not require a FOIA request to obtain. This information may be available at the DCRA Permit Center Records Room, located on the second floor of the DCRA office location, at 1100 4th Street, SW. The Records Room may be reached at 202-442-4480.

Please know that, under D.C. Official Code § 2-537 and 1 DCMR 412, you have the right to appeal this letter to the Mayor or to the Superior Court of the District of Columbia. If you elect to appeal to the Mayor, your appeal must be in writing and contain “Freedom of Information Act Appeal” or “FOIA Appeal” in the subject line of the letter as well as on the outside of the envelope. The appeal must include (1) a copy of the original request; (2) a copy of any written denial; (3) a statement of the circumstances, reasons, and/or arguments advanced in support of disclosure; and (4) a daytime telephone number, and e-mail and/or U.S. Mail address at which you can be reached. The appeal must be mailed to: The Mayor’s Correspondence Unit, FOIA Appeal, 1350 Pennsylvania Avenue, N.W., Suite 316, Washington, D.C. 20004. Electronic versions of the same information can instead be e-mailed to The Mayor’s Correspondence Unit at foia.mayor@dc.gov. Further, a copy of all appeal materials must be forward to the Freedom of Information Officer of the involved agency or to the agency head of that agency if there is no designated Freedom of Information Officer there. Failure to follow these administrative steps will result in delay in the processing and commencement of a response to your appeal to the Mayor.

If you have any questions, please don’t hesitate to contact me.

Sincerely,

Brandon Bass
Program Support Specialist, FOIA Office
Office of the Director
Department of Consumer and Regulatory Affairs
1100 4th Street SW
Washington, DC 20024
(202) 442-9538

March 5, 2015

To: Mayor's Correspondence foia.mayor@dc.gov
Fr: Alan Gambrell
RE: FOIA Appeal: DCRA Response to 2015-FOIA-01284
Cc: brandon.bass@dc.gov

Per D.C. Official Code § 2-537 and 1 DCMR 412, I am appealing DCRA's Response to 2015-FOIA-01284. Attached and below please find:

Statement of the circumstances, reasons, and/or arguments advanced in support of disclosure

DCRA has failed to provide email correspondence, worksheets and other documents that were used to provide determinations, which in turn were the basis for issuance of building permits and approval of building plans. Rather, DCRA's FOIA response was limited to

- (1) copy of the building permit Stop Work Order and
- (2) a response to the FOIA request that ignores the information request, which can be readily accommodated by DCRA as the request is specific in in terms of format, dates and specific DCRA parties.

Please note: The FOIA states that building permits and building plans are available from the DCRA Records Room, per DC Code §2-536(a)(8A), (permits and plans are all required to be made publicly available). **However, as of 3/6/15, more than 3 months after the requested correspondence and decisions from DCRA took place, and more than 2 months after issuance of the 1/8/15 permit of interest, such information is still not available from DCRA.**

Copy of the original request
(see Exhibit 1)

Copy of any written denial (DCRA response)
(see Attachment 2)

Phone, email, address
Alan Gambrell
gambrell@aol.com
1648 Argonne Place NW
Washington DC 20009
202-441-7288

Appeal of DCRA's Response to 2015-FOIA-01284 – March 6, 2015

Item Requested	Response	Appeal
Specific calculations used to arrive at LOC of 58.7% as stated in Rohan Reid's December 12, 2014 email from DCRA. Please specify the square footage considered to be part of the LOC determination and provide the zoning regulations and policies supporting the determination. (This email is included below as Attachment 1.)	Response Note 1: Information not provided. DCRA FOIA response of 3/3/15 states that this information is available from the DCRA Records Room, per DC Code §2-536(a)(8A)	Appeal Note 1: - Such information is not available from the DCRA Records Room, who information is limited to (1) building permits and (2) building plans. Furthermore, DCRA Records Room does not have information as of 3/6/15. - DCRA response fails to respond to FOIA request for information that serves as basis for administrative determination as documented in agency emails and calculation forms.
Specific information used to arrive at a FAR redetermination of 2.07, which resulted in issuance of a stop work order on December 3, 2014, as stated in Rohan Reid's December 12, 2014 email from DCRA. Please provide specific floor-by-floor square footage calculations and indicate which square footage was included and excluded for arriving at FAR of 2.07. (See Attachment 1.)	See Above Response Note 1	See Above Appeal Note 1
Specific information used that resulted in a change in the FAR to within the 1.8 limit and subsequent lifting of the stop work order on December 18, 2014, as stated in Matthew Le Grant's December 19, 2014 email from DCRA. (This email is included below as Attachment 2.) 4) Specific floor-by-floor calculations and square footage included and excluded for arriving at FAR compliance under 1.8 limit as stated by Mr Le Grant in his December 19, 2014 email. Please specific zoning regulations and policies supporting determination. (See Attachment 2.)	See Note 1	See Above Appeal Note 1
Specific lower level calculations, including the methodology used (perimeter wall or grade plane method), and grade to lower level ceiling distance for each perimeter, including front, rear, common wall (east), common wall (west). Please provide these for both the original plans that resulted in the December 3, 2014 Stop Work Order and the revisions that led to the lifting of that same order. (Date Range for Record Search: From 03/01/2014 To 01/09/2015)	See Note 1	See Above Appeal Note 1

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FOIA Request

Submitted Online to <https://foia-dc.gov/palMain.aspx> 1/16/15

REQUESTOR

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Thank you for your patience while our office was reviewing the building permit and plans.

Regards,

Rohan Reid

Program Analyst | Office of the Zoning Administrator

Department of Consumer and Regulatory Affairs

Government of the District of Columbia

1100 4th Street, SW, Suite E340 | Washington, DC 20024

(202) 442-4648 (p) | (202) 442-4863 (f) | rohan.reid@dc.gov | www.dcrd.dc.gov

Attachment 2

Email from Matthew Le Grant, DCRA

On Dec 19, 2014, at 5:25 PM, matthew.legrant@dc.gov wrote:

Concerned Neighbors of 1636 Argonne PI NW:

I wanted to update those neighboring residents who have expressed some concerns about the

project, regarding my office's latest action regarding this matter.

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Furthermore, I have found that there are no further Zoning related issues with this project. I have asked DCRA's Inspection Division to lift the current Stop Work Order [SWO] so the owner may proceed both the previously authorized construction under Permit #B1404813.

Please let me know if you have any further questions.

Best Regards,

Matthew Le Grant
Zoning Administrator
Dept of Consumer and Regulatory Affairs
Government of the District of Columbia
1100 4th St SW - Room 3100
Washington, DC 20024
Phone: 202 442-4652
Email: matt.legrant@dc.gov
Web: <http://dcra.dc.gov/service/zoning-dcra>

Exhibit 2: Appeal of DCRA's Response to 2015-FOIA-01284

Mr. Gambrell:

This email responds to your Freedom of Information Act (FOIA) request, received by this office on **January 16, 2015** and assigned FOIA number **2015-FOIA-01284** in which you requested the following documentation:

Please accept this letter as a request for documents under the DC Freedom of Information Act, DC Code §§ 2-531-539. Note that these documents include, but are not limited to, e-mails, drawings, plans, permit requests, permit approvals, telephone records, and visual voicemails regarding the building permits, issuance of a Stop Work Order on or about late November to early December 2014, and lifting of the Stop Work Order on 1636 Argonne Place, NW, Washington, DC, on or about December 19, 2014. The permits for construction at this address are: B1409928, issued 7/21/14 B1404813, issued 9/9/14 to 1/08/15 B1502210, issued December 19, 2014 More specifically, this request covers the data, drawings, and calculations used to determine the Floor Area Ratio (FAR) and Lot Occupancy (LOC) determinations for 1636 as follows: 1) Specific calculations used to arrive at LOC of 58.7% as stated in Rohan Reid's December 12, 2014 email from DCRA. Please specify the square footage considered to be part of the LOC determination and provide the zoning regulations and policies supporting the determination. (This email is included below as Attachment 1.) 2) Specific information used to arrive at a FAR redetermination of 2.07, which resulted in issuance of a stop work order on December 3, 2014, as stated in Rohan Reid's December 12, 2014 email from DCRA. Please provide specific floor-by-floor square footage calculations and indicate which square footage was included and excluded for arriving at FAR of 2.07. (See Attachment 1.) 3) Specific information used that resulted in a change in the FAR to within the 1.8 limit and subsequent lifting of the stop work order on December 18, 2014, as stated in Matthew Le Grant's December 19, 2014 email from DCRA. (This email is included below as Attachment 2.) 4) Specific floor-by-floor calculations and square footage included and excluded for arriving at FAR compliance under 1.8 limit as stated by Mr Le Grant in his December 19, 2014 email. Please specific zoning regulations and policies supporting determination. (See Attachment 2.) 5) Specific lower level calculations, including the methodology used (perimeter wall or grade plane method), and grade to lower level ceiling distance for each perimeter, including front, rear, common wall (east), common wall (west). Please provide these for both the original plans that resulted in the December 3, 2014 Stop Work Order and the revisions that led to the lifting of that same order. (Date Range for Record Search: From 03/01/2014 To 01/09/2015)

Regarding your request for documentation for the above-mentioned property, a search of our records was conducted for documentation of any Stop Work Orders and related documentation for the above-mentioned property. This search of our records revealed one (1) document responsive to your request. A copy of this document – Stop Work Order – is attached to this email.

Regarding your request for “...permits, drawings, permit requests, permits approvals, plans ...”, please note that, pursuant to DC Code §2-536(a)(8A), permits and plans are all required to be made publicly available and do not require a FOIA request to obtain. This information may be available at the DCRA Permit Center Records Room, located on the second floor of the DCRA office location, at 1100 4th Street, SW. The Records Room may be reached at 202-442-4480.

Please know that, under D.C. Official Code § 2-537 and 1 DCMR 412, you have the right to appeal this letter to the Mayor or to the Superior Court of the District of Columbia. If you elect to appeal to the Mayor, your appeal must be in writing and contain "Freedom of Information Act Appeal" or "FOIA Appeal" in the subject line of the letter as well as on the outside of the envelope. The appeal must include (1) a copy of the original request; (2) a copy of any written denial; (3) a statement of the circumstances, reasons, and/or arguments advanced in support of disclosure; and (4) a daytime telephone number, and e-mail and/or U.S. Mail address at which you can be reached. The appeal must be mailed to: The Mayor's Correspondence Unit, FOIA Appeal, 1350 Pennsylvania Avenue, N.W., Suite 316, Washington, D.C. 20004. Electronic versions of the same information can instead be e-mailed to The Mayor's Correspondence Unit at foia.mayor@dc.gov. Further, a copy of all appeal materials must be forward to the Freedom of Information Officer of the involved agency or to the agency head of that agency if there is no designated Freedom of Information Officer there. Failure to follow these administrative steps will result in delay in the processing and commencement of a response to your appeal to the Mayor.

If you have any questions, please don't hesitate to contact me.

Sincerely,

Brandon Bass
Program Support Specialist, FOIA Office
Office of the Director
Department of Consumer and Regulatory Affairs
1100 4th Street SW
Washington, DC 20024
(202) 442-9538

GOVERNMENT OF THE DISTRICT OF COLUMBIA



DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS
 Inspections & Compliance Administration
 1100 4th Street, SW – Fourth Floor
 Washington, DC 20024

STOP WORK ORDER

1636 ARGONNE PL NW

(Address)

You are hereby ordered to IMMEDIATELY STOP all work at this building or structure.

- ☒ You are performing work that violates the Construction Code:
☐ You are performing work in an unsafe and dangerous manner:

Code Section (s)	Violation (s)	What You Must Do to Correct the Violation (s)
11 DCMR 402.4	FLOOR AREA PATIO IS BEING EXCEEDED FOR R-S-B ZONE	1-SATISFY STOP WORK ORDER 2- OBTAI CONTACT DC ZONING DEPT.

Do NOT work at this address until you:

- ☒ Correct the violation(s)
☐ Pay the fine amount
☐ Obtain and post the required permit(s)
☐ Electrical ☐ Plumbing ☐ Construction ☐ Boiler ☐ Fire ☐ Elevator ☐ Other _____
☒ Receive approval from the Code Official to remove the Stop Work Order.

WARNING

Unauthorized removal of a posted Stop Work Order is a Construction Code violation, subject to penalties and injunctive relief under DC Official Code §6-1406 and §6-1407 and 12A DCMR §114.3.

A Stop Work Order for illegal construction under 12A DCMR §113.7 and §114.6 requires you to stop all work at the building or structure, whether or not the work requires building permits.

It is a Stop Work Order violation for an owner or agent to enter the site for any reason without the Code Official's approval. (The Building Official may allow temporary access to ensure the property's security and safety, under 12A DCMR §114.6.1.)

Anyone who continues any work in or around a structure posted with a Stop Work Order – except to do work that the Building Official approves to remove a violation or unsafe condition – is subject to penalties and injunctive relief under DC Official Code §6-1406 and 12A DCMR §105.8 and 12A DCMR §114.10.

RIGHT TO APPEAL

You have the right to appeal this Order to the Reviewing Official (Rabbiah Sabbakhan, Chief Building Code Official, Inspections and Compliance Administration) within 15 days of its posting, under 12A DCMR §114.11.1. You may call the Reviewing Official at (202) 442-7867. You may obtain a Stop Work Order Appeal Request Form at the address above or at dcra.dc.gov. If the Reviewing Official denies your appeal or takes no action within 10 working days of receiving it, you may appeal to the DC Office of Administrative Hearings (OAH). You may deliver your written request for a hearing to OAH at 441 4th Street, NW, Suite 1040S, Washington, DC 20002 or mail it to PO Box 77718, Washington, DC 20013-8713.

Signature of Issuing Official

Date

Time

Badge Number

Phone Number

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel

March 24, 2015

VIA ELECTRONIC MAIL

Mr. Alan Gambrell

RE: FOIA Appeal 2015-47

Dear Mr. Gambrell:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA") dated March 6, 2015, which this office received on March 11, 2015. In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") improperly withheld records you requested under the DC FOIA.

Background

On January 16, 2015, you submitted a request under the DC FOIA to the DCRA seeking "emails, drawings, plans, permit requests, permit approvals, telephone records, and visual voicemails regarding the building permits, issuance of a Stop Work Order on or about late November to early December 2014, and lifting of the Stop Work Order on 1636 Argonne Place, NW, Washington, DC, on or about December 19, 2014." You then made five (5) specific requests related to calculations used to determine the Floor Area Ratio and Lot Occupancy for 1636 Argonne Place, NW ("Property").

The DCRA responded to your request on March 3, 2015. In its response, DCRA provided you with a copy of the stop order you requested and advised that the information you sought pertaining to permits, drawings, permit requests, permit approvals and plans is publicly available at the DCRA Permit Center Records Room ("Records Room"). DCRA further provided you with the address and phone number of the Records Room.

On appeal, you challenge the DCRA's response to your request, contending that the response does not address information you are seeking, despite the fact that it is specific in terms of format, dates, and parties, and that although FOIA states that building permits and building plans are available from the DCRA Records Room, "such information is still not available from DCRA."

DCRA responded to your appeal in correspondence to this office dated March 16 and 23, 2015. The DCRA stated that as of March 13, 2015, you have obtained from the Records Room the

permit file for B1409228 and the first 17 pages of the permit file for B1404813.¹ DCRA explained that some of the information you are seeking has not yet become available in the Records Room because the agency is in the process of converting its permits and plans to digital format, and large format plans and documents for permits like B1404813 and B1409228 have not yet been scanned. According to DCRA, in these instances members of the public have the option of requesting that an authorized third party printing service retrieve specific plans and print copies at the requester's expense. DCRA stated that you have already done this for a number of documents. By way of further explanation, DCRA's assistant general counsel noted that "Since DCRA is in the process of converting to all-digital submissions, it may be that the DCRA Records Staff assumed that the permit and plans had been a hard copy submittal, and so were not able to retrieve the digital file. I will confirm if there are any additional plans in digital format, and if so, will submit them to Mr. Gambrell."

With regard to building permit application B1502210, DCRA indicated that the Records Room staff correctly informed you that this permit has not been issued because of an outstanding invoice. Once the fee is paid, the permit will be issued and the plans will be made publicly available in the Records Room.

DCRA addressed your contention that you have been denied specific calculations and specific information used to arrive at determinations as follows:

. . . FOIA provides for release of records, not "specific calculations" or "specific information" as requested by Mr. Gambrell, unless included in a record. For this reason, no records have been identified that respond to Mr. Gambrell's requests – except for emails referred to below. No records correspond to Mr. Gambrell's request because under the building and zoning permitting process, applicants are responsible for submitting plans and supporting documentation sufficient to enable the Zoning Administrator to confirm compliance with the Zoning Regulations. The Zoning Administrator therefore refers to, and uses, an applicant's plans and supporting documents in determining if the proposed project conforms with the Zoning Regulations, with any calculation based on the measurements included in the plans and documents. The "formulas" used to calculate various zoning requirements are based on the Zoning Regulations (Title 11 of the DCMR) and generally do not require an additional interpretive "formula" – for example the inclusion of a "basement" but not a "cellar" in the calculation of FAR (floor area ratio) is based on the definitions of "basement", "cellar", "gross floor area" and "floor area ratio", all in 11 DCMR 199.1. As a result, there is generally no separate "record" of a calculation used to determine if a

¹ DCRA indicated that only the first 17 pages of the permit file are available in the Records Room, and, as a result, the agency will be mailing you a hard copy of the entire permit file.

particular proposed project conforms to the Zoning Regulations, since the evidence of compliance is in the plans and documents submitted with the building permit application.

Lastly, with respect to the emails you are seeking related to the stop work order, DCRA acknowledged that it inadvertently failed to respond to this aspect of your request and stated that it is in the process of compiling responsive email messages to produce to you.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body ...” *Id.* at § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute may be examined to construe the local law.

Your appeal consists of requests for three types of records: building permits and plans, calculations, and emails. Building permits and plans are publicly available in the DCRA’s Records Room, and to date you have obtained some of the information you are seeking from the Records Room. Because DCRA is in the process of converting its permits and plans to digital format, some of the information you have requested has not yet been scanned; however, the agency’s assistant general counsel has indicated that he will review the files to determine if any additional plans in digital format exist that you have not yet obtained, and he will provide these to you.

In your appeal you maintain that the specific calculations you have requested are not available in the Records Room and that DCRA has “fail[ed] to respond to FOIA request for information that serves as basis for administrative determination as documented in agency emails and calculation forms.” Under the DC FOIA, an agency is required to disclose materials if they were “retained by a public body.” D.C. Official Code § 2-502(18). In *United States Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989), based on its prior decisions, the Supreme Court set forth two requirements that must be satisfied for records to qualify as “agency records”: first, an agency must either create or obtain the materials, and second, the agency must be in control of the requested materials when the FOIA request is made.

As DCRA explained at length in its response to your appeal and relayed in page 3 of this correspondence, there is generally no record of a calculation used to determine whether a particular proposed project conforms to the Zoning Regulations, “since the evidence of compliance is in the plans and documents submitted with the building permit application.” In

other words, if written calculations of the nature you are seeking exist, they would be contained in the permit files that have been or will be made available to you. The DCRA has not withheld any calculations from you; they are maintained as agency records in the permit files in the Records Room or they do not exist in writing for the reasons described above in DCRA's response to your appeal.

Lastly, with respect to the emails you have requested, DCRA has acknowledged that it has not yet produced these and is in the process of compiling them to be released.

Conclusion

Based on the foregoing, we hereby issue the following decisions:

- (1) With respect to the building permits and plans that you have requested, we remand this aspect of your appeal to the DCRA to determine what has not yet been produced to you and to make these records available within five business (5) days of the date of this decision;
- (2) With respect to your request for specific calculations and information used to arrive at zoning determinations, we uphold the decision of the DCRA on the grounds that any responsive written records that exist are or will be made available in the Records Room; and
- (3) With respect to the emails you are seeking, DCRA shall produce them to you, subject to appropriate exemptions under the DC FOIA, within five business (5) days of the date of this decision.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s/ Melissa C. Tucker

Melissa C. Tucker
Associate Director
Mayor's Office of Legal Counsel

cc: Maximilian L.S. Tondro, Assistant General Counsel (DCRA)