

17285

Patrick J. Carome
4747 Fulton Street NW
Washington, DC 20007
202-663-6610

February 4, 2005

BY EMAIL, FACSIMILE, AND FIRST CLASS MAIL

Deborah Britt
FOIA Officer
Department of Consumer & Regulatory Affairs
District of Columbia Government
941 North Capitol Street NE, Suite 9400
Washington, DC 20002
deborah.britt@dc.gov

RECEIVED
D.C. OFFICE OF ZONING
2005 FEB -8 PM 3:19

FOLLOW-UP TO FOIA REQUEST - URGENT

Dear Ms. Britt:

On January 11, 2005, you received my FOIA request, submitted pursuant to the District of Columbia Freedom of Information Act, D.C. Stat. § 2-534. According to D.C. Stat. § 2-532(c) - (d), your office had ten days, excluding weekends and legal public holidays, to either make the requested records available to me or notify me of your determination not to make those records available. The ten-day period for record production passed on January 26, 2005.¹

On January 27, 2005, you spoke with my counsel, Anne Harden, about the status of my FOIA request. At that time, you speculated that you would not make the records available until the middle of February. Not only will mid-February be long past the date upon which D.C. law requires your production of the records, it will also be far too late for me to make desired use of the records. As you are aware from the face of the FOIA request itself and from your conversation with my counsel, I seek access to these records in conjunction with a pending appeal before the D.C. Board of Zoning Adjustment regarding the Economides property at 4825 Dexter Terrace. The Board will hear my appeal on March 1, and I am supposed to file related submissions by February 15. I believe records vital to my appeal are both within the possession, custody, or control of the DCRA and within the scope of my FOIA request. Therefore, your failure to produce the requested records within the legally required period could substantially prejudice my position before the Board.

¹ In a conversation with my counsel, Anne Harden, you suggested that a recent change in D.C. law provided your office with fifteen days to make the records available. This change in law is not reflected in the D.C. Statutes or on the D.C. government's webpage. Even if this change in law has occurred, however, the fifteen-day period expired on February 2.

BZA

Case No. 17285
Exhibit No. 17

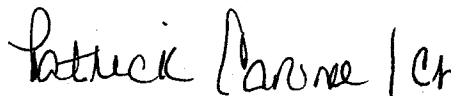
Board of Zoning Adjustment
District of Columbia
CASE NO. 17285
EXHIBIT NO. 17

Ms. Harden attempted to reach you by phone earlier this week in order to discuss prioritizing my FOIA request and ensuring that I receive the necessary materials immediately. The Office of General Counsel reported that you will be out of the office for the entire week of January 31, 2005 through February 4, 2005, and that *no work related to any FOIA requests* will occur in your absence. With due respect for your scheduling needs and the number of FOIA requests under your review, I must express my concern and frustration with the knowledge that my request--now a week overdue--will not be addressed until Monday, February 7, 2005, at the earliest.

The failure of DCRA to make the requested records available is an especially egregious violation of my rights insofar as it is preventing me from obtaining copies of plan documents, reports of inspections, and notices and orders issued that are in the DCRA's possession and that relate to the very property (and even the very permit) that is the main subject of my BZA appeal. Independently of the DC FOIA, I have a right to immediate access to, and prompt copies of, all such documents pursuant to 12 DCMR §§ 103.5 and 104.7. DCRA officials in the Permit Center have repeatedly failed to provide me with access to all such documents and copies and have referred me to the FOIA process — which obviously is defectively slow — as my only means of to satisfy my rights of access. This is a violation of my statutory and regulatory rights.

This situation is simply unacceptable. I must insist that you and your agency fulfill your legal duty to make copies of all of the requested records available to me immediately.

Sincerely,


Patrick J. Carome

cc: Patrick Canavan, Director, DCRA
Richard Nero, Chief of Support Services, Office of Zoning
Kathy Patterson, D.C. Councilmember, Ward 3
Penny Pagano, Chief of Staff, Office of Councilmember Patterson
Alma Gates, Chair, ANC Commission 3D
Diane Williams, Staff Assistant, DCRA
Toye Bello, Zoning Administrator, DCRA