

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR**



Mayor's Office of Legal Counsel

March 6, 2018

VIA ELECTRONIC MAIL

Ms. Valerie Jablow

RE: FOIA Appeal 2018-080

Dear Ms. Jablow:

This letter responds to the administrative appeal that you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”), on the grounds that the Department of General Services (“DGS”) improperly responded to your October 13, 2017 request for records related to Fletcher-Johnson Middle School. On December 19, 2017, after agreeing to waive fees related to your request, DGS informed you that it would review and produce to you non-exempt, responsive documents on a rolling basis beginning on December 27, 2017. Your appeal is based in part on the delay, and in part on specific redactions DGS made to an email chain it produced to you.

This Office received your appeal on February 20, 2018, and asked DGS to provide us with a response. DGS responded on March 1, 2018, and advised us that after receiving your appeal it reconsidered its original response and provided you with an unredacted copy of the email chain cited to in your appeal.¹ Part of your appeal was based on DGS’s redaction of an email chain, and the agency has stated that it has since produced an unredacted copy; therefore, we consider that portion of your appeal to be moot and hereby dismiss it.

Additionally, DGS responded to your accusation that the delay in its production amounted to a constructive denial. DGS noted that after it received your request, it properly asked you to clarify the terms of your request and then properly requested an extension to respond. In accordance with 1 DCMR § 405.5, DGS: (1) explained to you the reason for the delay in its response – the voluminous number of records to be reviewed; and (2) advised you as to the date on which it would complete its production - 12 weeks from December 27, 2017. DGS addressed your concerns that you have received fewer documents than DGS predicted you would at this point, by explaining that the number is below the projected amount because many of the documents initially flagged as responsive in the email search have, after review, been determined to be non-responsive to your request. Nonetheless, you filed this appeal pursuant to D.C. Official Code § 2-532(e) on the basis that DGS has constructively denied your request.

¹ DGS’s response is attached.

We agree that your October 13, 2017 request has not been completed in the statutory timeframe, and as a result has been constructively denied. Therefore, we remand this matter to DGS to complete its search by March 21, 2018.

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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: C. Vaughn Adams, Senior Assistant General Counsel, DGS (via email)