

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



OFFICE OF THE ATTORNEY GENERAL'S FISCAL YEAR 2012
FREEDOM OF INFORMATION ACT LITIGATION REPORT
(October 1, 2011 through September 30, 2012)

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: Fraternal Order of Police, Metropolitan Police Labor Committee v. District of Columbia (MPD)
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 plaintiff.
d. Costs Assessed: \$7,527.85.
2. 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: Summary judgment granted in favor of Plaintiff
d. Cost Assessed: No fees assessed to date.
3. 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: Motions pending
d. Costs assessed: No fees assessed to date.
4. 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: Plaintiff's Motion for Summary Judgment is pending.
d. Costs Assessed: No fees assessed to date.
5. 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) (2)01) - Personal Privacy
D.C. Official Code §2-534(a)(3) (2)01) - Law Enforcement
D.C. Official Code §2-534(a)(4) (2)01) - Common Law
Privileges
D.C. Official Code §2-534(a)(6) (2)01) - Statutory
Exemption
c. Disposition of Case: Motions pending
d. Costs assessed: Motion for attorneys' fees denied
6. 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) (2)01) - Personal Privacy
D.C. Official Code §2-534(a)(4) (2)01) - Common Law
Privileges
c. Disposition of Case: Judgment for the Plaintiff.
d. Costs assessed: Motion for attorneys' fees granting/Motion for
reconsideration pending
7. 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) (2)01) - Personal Privacy
c. Disposition of Case: Motions pending.

- d. Costs assessed: No fees assessed to date.
8. a. Case Name/Number: Frost v. District of Columbia (MPD)
Civ. No. 12-6538
- b. Exemption(s) Claimed: None
- c. Disposition of Case: Voluntarily dismissed
- d. Costs assessed: None
9. a. Case Name/Number: Fraternal Order of Police, Metropolitan Police Labor Committee v. District of Columbia (MPD)
Civ. No. 10-8401
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(4 – Deliberative
Process
- c. Disposition of Case: Summary judgment granted in favor of Defendant
- d. Cost Assessed: No fees assessed.
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: Dispositive motions not yet filed.
- d. Cost Assessed: No fees yet assessed.
11. a. Case Name/Number: Fraternal Order of Police, Metropolitan Labor Committee v. District of Columbia (MPD)
Civ. No. 11-6030
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2) – Personal Privacy;
D.C. Official Code §2-534(a)(5) – Test questions and answers
- c. Disposition of Case: Summary judgment granted in favor of Plaintiff
- d. Cost Assessed: \$8,299.09
12. 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: Motions Pending
- d. Cost Assessed: No fee assessed to date

13. 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: Dispositive motions pending (District's motion to dismiss;
Plaintiff's motion for summary judgment)
- d. Costs assessed: No fees assessed to date
14. a. Case name/number: Fraternal Order of Police v. District of Columbia (OLRCB)
Civ. No. 08-4866
- b. Exemption claimed: D.C. Code § 2-534(a)(1) – Commercial information
D.C. Code § 2-534(a)(2) – Personal Privacy
D.C. Code § 2-534(a)(4) – Communications with the D.C.
Council
D.C. Code § 2-534(a)(4) & (e) – attorney-client
communication, attorney work product, deliberative
process;
- c. Disposition of case: Summary judgment granted in favor of Plaintiff
- d. Costs assessed: None (Plaintiff's motion for fees denied)
15. a. Case name/number: Fraternal Order of Police v. District of Columbia (MPD)
2011 CA 006032 B
- b. Exemption claimed: D.C. Code § 2-534(a)(4) & (e) – deliberative process
- c. Disposition of case: Summary judgment granted in favor of the District;
Plaintiff's motion for reconsideration denied; the
case is now on appeal at the D.C. Court of Appeals
- d. Costs assessed: None.
16. 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: Open; Summary judgment granted in favor of Plaintiff.
- d. Costs Assessed: No fees assessed to date.

17. 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
- d. Costs Assessed: No fee petition filed or fees assessed to date.

18. 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; case on
appeal before the Court of Appeals
- d. Costs Assessed: No fees assessed to date.

19. 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; case on
appeal before the Court of Appeals
- d. Costs Assessed: No fees assessed to date.

20. a. Case Name/Number: Partnership for Civil Justice Fund v. District of Columbia (MPD)
Civ. No. 09-748
- b. Exemption(s) Claimed: D.C. OFFICIAL CODE § 2-534(e) – law enforcement privileged material
- c. Disposition of Case: Summary judgment granted in favor of Plaintiff
- d. Costs Assessed: Attorneys’ fees were settled for \$190,000.00.
21. 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: Pending before Superior Court
- d. Costs Assessed: No fees assessed to date.
22. 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 material¹
- c. Disposition of Case: Pending before Superior Court
- d. Costs Assessed: No fees assessed to date
23. a. Case Name/Number: Fraternal Order of Police, Metropolitan Labor Committee v. District of Columbia (MPD)
Civ. No. 10-3447
- b. Exemption(s) Claimed: D.C. OFFICIAL CODE § 2-534(a)(2) – unwarranted invasion of personal privacy
- c. Disposition of Case: Judgment in favor of Plaintiff.
- d. Costs Assessed: \$7,527.85.

THE CIVIL LITIGATION DIVISION (CLD)

SECTION I

1. a. Case Name/Number: Fraternal Order of Police v. District of Columbia (MPD)

¹ MPD has not completed reviewing all of the records, so other exemptions may apply.

Civ. No. 05-7011, District of Columbia Superior Court

- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2)(2001) – Personal Privacy
D.C. Official Code § 2-534 (a)(3)(A)(i) (2001) – Law Enforcement Investigatory Records;
D.C. Official Code §2-534(b)(2001) – 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: Matter was remanded to Superior Court. The case is fully briefed and pending decision.
- d. Costs Assessed: None. Plaintiff’s motion for attorney’s fees and the District’s motion to shift cost of production to petitioner is pending.
2. 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) (2001) – Personal Privacy
- c. Disposition of Case: Summary judgment granted 11/6/12. FOP moved for reconsideration on 11/20/12. The motion is still pending.
- d. Costs Assessed: None
3. a. Case Name/Number: Padou v. District of Columbia (Council)
Civ. No. 11-5174, District of Columbia Superior Court
- b. Exemption(s) Claimed: None
- c. Disposition of Case: Dismissed
- d. Costs Assessed: None, although D.C. paid \$140.00 to plaintiff for filing fee
4. 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) (2001) – Personal Privacy
D.C. Official Code §2-534(a)(4) (2001) – Deliberative Process, Law Enforcement, Attorney-Client, Attorney Work Product Privileges and National Security Interests
D.C. Official Code §2-534(a)(6) (2001) – 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. Parties are currently disputing whether FOP has a right to the search terms of the agency’s second search given the District’s argument that the case is moot.
- d. Costs Assessed: None
5. a. Case Name/Number: Gunn v. v. District of Columbia (DOC)
Civ. No. 11-2224, District of Columbia Superior Court
- b. Exemption(s) Claimed: None
- c. Disposition of Case: Dismissed
- d. Costs Assessed: None

SECTION II

1. a. Case Name/Number: Frankel v. D.C. Office of the Deputy Mayor for Planning and Economic Development (EOM)
Civ. No. 09-7594 B, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(4)(2001) – Common Law Privileges
- c. Disposition of Case: Judgment for the Plaintiff
- d. Costs Assessed: \$97,373.51 in attorney’s fees awarded to the Plaintiff’s counsel

2. 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)(2001) – Common Law Privileges
- c. Disposition of Case: Plaintiff’s motion for summary judgment granted. Plaintiff’s motion for attorney’s fees pending.
- d. Costs Assessed: No fees assessed to date

3. a. Case Name/Number: Prison Legal News v. District of Columbia (DOC)
Civ. No. 08-4598, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(c)(3)(2001) – Investigative Privilege
- c. Disposition of Case: Case closed on 12-01-2011
- d. Costs Assessed: Fees/costs pursuant to Section 2-537(c): \$75,290.00

4. 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)(2001) – 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

5. 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)(2001) - Deliberative process privilege
D.C. Official Code §2-534(a)(3)(A)(2001) – Ongoing Criminal Investigation
- c. Disposition of Case: District’s summary judgment motion granted in part and denied in part.
- d. Costs Assessed: Awaiting fee petition.

6. 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)(2001) - Deliberative process privilege
D.C. Official Code §2-534(a)(1)(2001) – Trade Secrets
- c. Disposition of Case: remains pending
- d. Costs Assessed: No fees assessed to date.

SECTION III

1. 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: Pending
- d. Costs Assessed: None

2. 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

3. 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
- d. Costs Assessed: \$200

4. 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
- d. Costs Assessed: \$300

5. 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

6. 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

SECTION IV

1. a. Case Name/Number: Ariel King v. District of Columbia (CFSA)
Civ. No. 10-565, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code § 2-534 (a)(6)(2001) – Statutory Exemption
D.C. Code Sec. 4-1303.06(a), 4-1405(b),(c)
- c. Disposition of Case: Motions pending
- d. Costs Assessed: None to date

2. a. Case Name/Number: Fraternal Order of Police v. District of Columbia (MPD)
Civ. No. 11-7550, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2)(2001) – Personal Privacy
- c. Disposition of Case: Motions pending
- d. Costs Assessed: No fees assessed to dates

3. a. Case Name/Number: Human Rights Watch v. District of Columbia (MPD, OUC)
Civ. No. 11-10029, District of Columbia Superior Court
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2)(2001) – Personal Privacy
D.C. Official Code §2-534(a)(3) (2001) –Law Enforcement Records
- c. Disposition of Case: Settled; Plaintiff received no monetary award from the District.
- d. Costs Assessed: None

4. a. Case Name/Number: Fraternal Order of Police v D.C.
2010 CA 006566 B, District of Columbia Superior Court
- b. Exemption(s) Claimed: The documents have been produced
- c. Disposition of Case: Motions pending- FOP's motion for summary judgment has been denied.
The District's motion for summary judgment and FOP's motion for reconsideration are pending.
- d. Costs Assessed: None to date

COMMERCIAL DIVISION

1. a. Case Name/Number: Don Padou v. D.C. (OCFO)
Civ. No. 12-7239, District of Columbia Superior Court
- b. Exemption(s) Claimed: None-OCFO produced the requested records
- c. Disposition of Case: Motions pending
- d. Costs Assessed: None to date

OFFICE OF THE SOLICITOR GENERAL (CASES NOT DISCUSSED EARLIER IN THE REPORT)

- 1.a. Case Name/Number: FOP v. DC, DCCA No. 12-CV-351, Sup. Ct. No. 5152-10
Documents related to Intoxilyzer
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(3) – Investigatory Records
- c. Disposition of Case: Superior Court granted judgment to DC; FOP appealed.
- d. Costs Assessed: None to date

- 2 a. Case Name/Number: FOP v. DC, DCCA Cross-Appeals Nos. 12-CV-1399, 12-CV-1473, Sup. Ct. No. 4867-08.
- Broad request to OPC for documents.
- b. Exemption(s) Claimed: None. However, the request did not “reasonably describe” the records sought.
- c. Disposition of Case: We produced documents per court order. OPC hired private vendor to produce documents. DC moved for court to order FOP to pay entire cost of vendor. Court ordered FOP to reimburse DC one-half of that cost. Court denied FOP’s request for attorneys’ fees. Parties filed cross appeals.
- d. Costs Assessed: No costs assessed against DC. FOP ordered to reimburse DC half of cost of production. Dollar figure not set forth in order.
3. a. Case Name/Number: FOP v. DC, DCCA Nos. 10-CV-1600, 10-CV-1626, 12-CV-205, Sup. Ct. No. 5557-08.
- Request for emails between MPD and OAG.
- b. Exemption(s) Claimed: D.C. Official Code §2-534(a)(2),(4), (e) – the attorney work product and deliberative process privileges, and personal privacy exemption
- c. Disposition of Case: Superior Court held that disciplinary files are exempt under privacy exemption, but ordered production of OAG-MPD emails based on waiver or privilege. Parties took cross-appeals which are pending.
- d. Costs Assessed: None to date
4. a. Case Name/Number: FOP v. DC, DCCA No. 11-CV-545, Sup. Ct. No. 6777-09.
- Emails to or from MPD Chief
- b. Exemption(s) Claimed: None. DC eventually produced the documents.
- c. Disposition of Case: Superior Court granted judgment to FOP but denied award of attorney’s fees. FOP appealed. DC Court of Appeals affirmed Aug. 23, 2012

d. Costs Assessed:

None. This case is over