

I am writing to applaud Mary Cheh's initiative in tackling FOIA reform and to share my experience of FOIA in Washington, DC. My name is Rebecca Renner. I have been a science writer for over 20 years. I hold a Ph.D. in geochemistry from Cambridge University. My writing has appeared in numerous publications including: Scientific American, Science, New Scientist, Salon.com, Professional Ethics Report, Environmental Science and Technology and Environmental Health Perspectives. I am a regular contributor to the latter two publications.

Since 2004 I have been reporting on lead contamination in tap water. My interest was sparked by the lead contamination episode in Washington, DC from 2001 to 2004. As part of my reporting I have submitted numerous FOIA requests to the Washington, DC Water and Sewer Authority (DC WASA) under DC Freedom of Information regulations. On June 14 this year, I will celebrate the fourth anniversary of my attempts to obtain information in the public interest from DC WASA.

How can I sum up my FOIA experience? Sometimes it has been comical, almost always frustrating, and occasionally bizarre, as I detail below. I have obtained some information that provides insights into how public agencies act in the face of a major pollution event caused in part by the actions of the very same public agencies. But, I attribute those successes mainly to luck and persistence, not the efficacy of Washington's FOIA regulations. Indeed, I did not obtain any useful e-mails until I contacted one of WASA's directors, Alan Roth on April 25, 2008 and complained. Just 5 days after this contact, I received a large number of responsive e-mails for 2006, but that happened just once. The current DC FOIA regulations, in my experience, allow DC governmental agencies to deter FOIA requesters through the use of seemingly endless delays and the unlimited and far too broad usage of an exemption for information that relates to the deliberative process by which agencies make decisions. Here below are some of the highlights of my FOIA experience:

1. \$471,680, really?

WASA's initial estimate for e-mails I requested in June 2006 was \$207,809.00 to \$471,680. This estimate was supplied on April 23, 2007 in response to my Mayor's Office appeal. I logged the appeal in response to WASA's delays. When I challenged these estimates, they were subsequently reduced to \$15,000, and then to \$9,000, with no explanation for the reduction. When I requested a fee waiver because I am a reporter acting in the public interest, WASA originally denied it. But, my fee waiver was allowed on appeal to the Mayor's Office. Under the previous FOIA officer, Webster Barnes, WASA would provide responsive documents electronically. But, under the current FOIA officer, Katherine Cahill, WASA requires me to pay photocopying charges and then sends me paper copies, even though I have repeatedly requested copies in electronic format. This seems like a nuisance and unnecessary work for the FOIA office.

2. no e-mails from 2004?

The contamination of Washington, DC's water by high levels of lead became public in January, 2004. So it seems likely that 2004 should have been a busy year for correspondence between DC WASA and its public health consultant, Tee Guidotti who, at that time, was a professor at George Washington University. I was initially told that DC WASA did not have any e-mails or other

correspondence between its public health consultant, Tee Guidotti and DC WASA officials for that year. Then after Katherine Cahill came in as the new FOIA officer I received 2004 e-mails and was informed of withheld documents on March 23, 2009. I am left doubting whether WASA has finally retrieved all of the 2004 messages between Guidotti and WASA staff.

3. Stay away from Ward 4?

A report by the current Attorney General, Eric Holder, who at the time was a partner with Covington and Burling, describes a study by Baker Killam, an engineering consulting group to DC WASA. Baker Killam found very high levels of lead in the drinking water in Ward 4 households in certain parts of the ward. Based on this study or analysis, Baker Killam began avoiding these neighborhoods in conducting WASA's lead sampling. Here is the excerpt from the Holder Report (bottom of page 109 top of page 110):

“In the beginning of August, Baker Killam discovered a solution to the problem of finding enough lead service lines to test below the LAL. In an August 7, 2003 e-mail, Mr. Gans informed Mr. Benson that Baker Killam had conducted a geographic analysis and found that the lead service lines with high levels of lead were geographically related (Tab 260). Specifically certain neighborhoods in Ward Four had much higher lead concentrations than other neighborhoods. (ID). Consequently Baker Killam began to avoid these neighborhoods in conducting WASA's lead sampling for testing in lieu of replacement. Baker Killam told Mr. Gans that it was confident that it could obtain 1,600 “passing” results and still maintain geographic diversity.

In my FOIA, I requested the document and any e-mail traffic about the document. DC WASA claims to not have a copy of this document. DC WASA maintains that it was never supplied a copy of the document. My request for e-mail traffic about the analysis has been ignored.

3. DC WASA paid over \$1 million for what?

Contracts obtained via FOIA show that from 2004 to 2008 DC WASA paid George Washington University over \$1 million for the services of Tee Guidotti and his team. These same contracts specify numerous completed work products. But my attempts to acquire the final versions of these work products have been largely unsuccessful. When I queried this Webster Barnes, WASA's former FOIA officer wrote to me in an e-mail message:

“please note that much of the information and work product provided by GW was in the form of advice and editorial comment on publications.”

But the current FOIA officer, Catherine Cahill seems to believe that these final work products do exist. She has informed me that she is still trying to locate them.

If what Mr. Barnes told me was correct, then the, “final work products,” are shielded by the deliberative process exemption because the “final work products” provided by GW were advice and editorial comment on publications.

If Ms. Cahill is correct, then WASA cannot put its hands on documents it spent over \$1 million dollars to produce. Under current FOIA law in DC I find it hard to see how I can ever get to the bottom of this.

Either way my FOIA request appears to be lost in Catch-22.

Inches high stack?

Over the Memorial Day weekend in 2008, I received a phone call from WASA Director Alan Roth. Mr. Roth told me he was calling from his vacation home on Cape Cod because he was concerned about the way that DC WASA was handling my FOIA requests. He told me that he had seen a stack of paper, inches high, with documents that might be responsive to my FOIA. He also told me that DC General Counsel Avis Russell informed him that DC WASA would not be sending the documents to me. When I asked him why or how Ms. Russell was able to justify this, Mr. Roth indicated that I had unwittingly given WASA an excuse to limit my request.

What happened to the Mayor's Office?

In and before 2007, my appeals to the Mayors Office were handled by Chip Richardson and his assistant Valerie Scott. Ms. Scott was very helpful and Mr. Richardson responded in a timely and fair manner. Since 2009 my appeals have been handled by Runako Allsopp, and then while she was on maternity leave, Acting Deputy General Counsel, George Spears at 202-727-2292. Ms. Allsopp's responses are much slower than Mr. Richardson's and I have not been able to contact Mr. Spears.

Just received voluminous discs?

On April 29, 2010 Ms. Cahill wrote to me:

Currently, we have again canvassed the departments for the information you requested. We received voluminous information on disks from the Information Technology department yesterday, April 28, 2010 which we are now required to review.

After almost 4 years of requesting what are fundamentally the same documents, the FOIA office is only now receiving new information? When I asked Ms. Cahill how this could be, she said she did not know, the FOIA office puts out requests, but it is for the various departments to respond.

I look forward to reviewing this new information and I am currently considering ways to fund legal action to acquire the documents.