

**IN THE SUPERIOR COURT  
FOR THE DISTRICT OF COLUMBIA**

**CIVIL DIVISION**

**D.C. OPEN GOVERNMENT COALITION,**

**Plaintiff,**

v.

**COUNCIL OF THE DISTRICT OF COLUMBIA**

**Defendant.**

Case No.: **2012 CA 008118 B**

Judge Laura A. Cordero

Initial Status Conference:  
9:30 a.m. February 22, 2013

**STIPULATION OF DISMISSAL AND CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by the parties through their respective undersigned counsel as follows:

1. On January 2, 2013, the Council of the District of Columbia (“Council”) adopted Rules of Organization and Procedure for the Council (“Rules”), Rule 811 of which addresses FOIA Procedures.

2. Rule 811(d) of the Rules provides:

(1) Upon receipt of a written request for access to a record, the FOIA Officer shall make a good-faith effort to determine if the record requested is a public record and whether the Council possesses the identified record.

(2) If a requester specifically identifies an email that is a public record that is not in the possession of the Council, and where the requester has made a reasonable showing that the record is in the possession of a Council employee, including the Chairman and each Councilmember, the FOIA Officer shall request that the employee search for and produce the record believed to be in the employee’s possession. An employee receiving a request under this paragraph shall make reasonable efforts to search for and produce the record to the FOIA Officer within the time and in the form prescribed by the FOIA Officer.

3. Rule 811(g) of the Rules prospectively establishes procedures for the transaction of public business through email accounts:

By no later than March 1, 2013, a Council employee, including the Chairman and each Councilmember, shall use the employee's government-provided email account to transact public business, including official action of any kind, unless the employee takes steps to ensure that any emails transmitted or received on an account other than the account provided by the government are otherwise incorporated into the Council's records.

4. On January 14, 2013, the Secretary of the Council delegated her duties as the Council's FOIA Officer to the General Counsel of the Council, effective January 2, 2013.

5. In accordance with the District of Columbia Freedom of Information Act (D.C. Official Code § 2-531 *et seq.*), the General Counsel and his staff shall interpret Rule 811(d)(2) to mean that if there is a reasonable basis to believe that some or all of the reasonably described records responsive to a particular FOIA request are to be found in a non-governmental email account of a Council employee, including the Chairman and each Councilmember, the FOIA Officer will take reasonable steps to identify and collect such materials in response to the FOIA request, such as by requesting that the employee search for and produce the record believed to be in the employee's possession.

6. Based on the foregoing, and pursuant to Rule 41(a)(1) of the District of Columbia Superior Court Rules of Civil Procedure, the above-referenced action shall be and hereby is dismissed without prejudice, with each party to bear its own costs and attorneys' fees.

IT IS ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2013 SO ORDERED:

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Hon. Laura A. Cordero  
Associate Judge

The undersigned parties hereby stipulate and consent to the form and entry of this Order.

Dated: January 23, 2013

By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of January, 2013, I directed that the foregoing be served through the Court's electronic service on the following:

V. David Zvenyach, Esq.  
John Hoellen, Esq.  
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/s/ Chad R. Bowman  
Chad R. Bowman