

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

<b>TERRIS, PRAVLIK &amp; MILLIAN, LLP,</b>	:	<b>Case No. 2020 CA 003087 B</b>
<i>Plaintiff,</i>	:	
	:	
v.	:	<b>Judge Heidi M. Pasichow</b>
	:	
	:	
<b>THE DISTRICT OF COLUMBIA,</b>	:	
<i>Defendant.</i>	:	

**ORDER GRANTING PLAINTIFF TERRIS, PRAVLIK & MILLIAN LLP’S MOTION  
FOR SUMMARY JUDGMENT AND DENYING DEFENDANT DISTRICT OF  
COLUMBIA’S CROSS-MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court based upon (1) Plaintiff Terris, Pravlik & Millian, (“TPM”) LLP’s Motion for Summary Judgment, Declaratory Judgment, and a Permanent Injunction (“Plaintiff’s Motion”) and Defendant the District of Columbia’s (“District”) Opposition of Plaintiff’s Motion for Summary Judgment and Cross-Motion for Summary Judgment (“Defendant’s Opposition”). All parties are represented by Counsel.

**I. Procedural History**

On July 13, 2020, Plaintiff Terris, Pravlik & Millian, LLP (“TPM”) filed the Complaint against Defendant the District of Columbia (“the District”) requesting that the Court order the District “to produce budget-related documents and to put them on its website.” Compl. at 2. TPM properly served the District with the Complaint on July 24, 2020.

On September 22, 2020, the District filed a Motion to Dismiss “contending (1) that the documents are protected by the deliberative process privilege and the DC Code does not make them public information; (2) that TPM served the FOIA request on the wrong agency; (3) that, even if the D.C. Code does make the documents public information, the provision of the D.C.

Code is invalid because it violates the separation of powers in the District of Columbia government, and (4) that the documents are protected by executive privilege; and that even if none of that is true, (5) this Court lacks the power to compel the District to put the documents on its website, and (6) TPM lacks standing to ask the Court to do so.” Pl.’s Consent Mot at 2.

On September 30, 2020, TPM filed its Consent Motion for a Two-Week Extension of Time to Oppose Defendant’s Motion to Dismiss. On October 13, 2020, the Court issued an Order Granting TPM’s Consent Motion, ordering TPM to submit its Opposition to the District’s Motion to Dismiss on or before October 20, 2020. Then, on October 16, 2020, the Council for the District of Columbia submitted an Unopposed Motion for Leave to File a Memorandum as Amicus Curiae in Support of TPM’s Opposition to Defendant’s Motion to Dismiss TPM’s Complaint.

On October 20, 2020, TPM filed an Opposition to the Motion to Dismiss. On October 21, 2020, Defendant filed a Partial Consent Motion for an Extension of Time to Reply in Support of Motion to Dismiss TPM’s Complaint and for Leave to File a Reply of More than Five Pages. On October 30, 2020, the Council for the District of Columbia filed a Praecipe Provisionally Submitting its Memorandum of Points and Authorities as Amicus Curiae in Support of TPM’s Opposition to Defendant’s Motion to Dismiss TPM’s Complaint (“Council’s Praecipe”).

On November 12, 2020, the Court issued an Order (1) Holding the District’s Motion to Dismiss in Abeyance, (2) Granting the Motion of the Council of the District of Columbia to File a Memorandum as *Amicus Curiae* in Support of TPM’s Opposition to Motion to Dismiss, and (3) Granting the District’s Partial Consent Motion for an Extension of Time to Reply in Support of Motion to Dismiss. On November 13, 2020, the District filed a Reply in Support of its Motion to Dismiss. On January 08, 2021, TPM filed a Joint Motion seeking to continue the parties’ January

15, 2021 Scheduling Conference until after the Court has ruled on Defendant's Motion to Dismiss.

On January 14, 2021, the Court issued an Order (1) Granting the Joint Motion to Reschedule, and (2) Holding in Abeyance the District's Opposed Motion to Dismiss, and (3) Requesting the parties provide supplemental briefings on select issues. On January 29, 2021, TPM filed its Response to this Court's Order for Further Briefing on Three Issues, and the District filed its Supplemental Briefing in Support of Motion to Dismiss. On February 5, 2021, the District filed its Response to TPM's Supplemental Brief. On February 10, 2021, Attorney Nicholas Soares filed a Praecipe to enter his appearance on behalf of TPM. On February 11, 2021, in light of the parties' supplemental briefs, the Court issued an Order (1) Holding in Abeyance the District's Opposed Motion to Dismiss, and (2) Vacating and rescheduling the parties' Scheduling Conference from February 12, 2021 to March 19, 2021 at 9:30am. On February 12, 2021, the Court issued an Order denying Defendant's Motion to Dismiss ordering the District to file an Answer to the Complaint on or before February 26, 2021. On February 26, 2021, the District filed an Answer to the Complaint.

On March 10, 2021, the parties filed a Joint Motion Requesting a Scheduling Order and Related Relief which was granted on March 16, 2021 and a Status hearing was scheduled for July 23, 2021. On April 16, 2021 TPM filed Plaintiff's Motion for Summary Judgment, Declaratory Judgment, and a Permanent Injunction ("Motion"). On April 23, 2021, Council of the District of Columbia filed a Statement of the Council of the District of Columbia as Amicus Curiae in Support of Plaintiff's Motion for Summary Judgment, Declaratory Judgment, and a Permanent Injunction ("Amicus"). On May 14, 2021, Defendant filed its Opposition of Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment

(“Opposition”). On June 11, 2021, Plaintiff filed Plaintiff’s Reply in support of its Motion for Summary Judgment, Declaratory Judgment, and a Permanent Injunction, and Opposition to Defendant’s Cross-Motion for Summary Judgment. Finally, on June 30, 2021, Defendant filed Defendant’s Reply in Support of Cross-Motion for Summary Judgment.

## **II. Legal Standard**

Rule 56(a) provides in relevant part, “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” See Osbourne v. Capital City Mortgage Corp., 667 A.2d 1321, 1324 (D.C. 1995); Smith v. Washington Metropolitan Area Transit Authority, 631 A.2d 387, 390 (D.C. 1993). In meeting their burden to show that no genuine dispute of any material fact exists, the movant must provide “evidence from which, were it accepted as true, a trier of fact might find for the [movant].” Allen v. District of Columbia, 100 A.3d 63, 67 (D.C. 2014).

If the moving party successfully carries this burden, the burden shifts to the non-moving party to show the existence of an issue of material fact. Smith v. Swick & Shapiro, P.C., 75 A.3d 898, 901 (D.C. 2013); Bruno v. Western Union Financial Services, Inc., 973 A.2d 713, 716 (D.C. 2009); Osbourne, 667 A.2d at 1324. This standard does not merely require an opposing party to raise a disputed factual issue, but rather show that the fact is material and that there is sufficient evidence supporting the claimed factual dispute to require a jury or judge to resolve the parties’ differing versions of the truth at trial. William J. Davis, Inc. v. The Tuxedo LLC, 124 A.3d 612, 624 (D.C. 2015). Put another way, “when a motion for summary judgment is made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or otherwise provided in this Rule, must set forth specific facts showing there is a genuine issue for trial.” Johnson v. Hobson, No. 84-

1187, 1986 D.C. App. LEXIS 514, at \*7–8 (quoting International Underwriters, Inc. v. Boyle, 365 A.2d 779, 782 (D.C. 1976)).

Viewing the non-moving party’s evidence in the light most favorable to it, the Court must decide whether “the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Hunt v. District of Columbia, 66 A.3d 987, 990 (D.C. 2013). The Court may grant summary judgment only if no reasonable juror could find for the non-moving party as a matter of law. Biratu v. BT Vermont Avenue, LLC, 962 A.2d 261, 263 (D.C. 2008); Tucci v. District of Columbia, 956 A.2d 684, 690 (D.C. 2008). In making this determination, the court cannot “resolve issues of fact or weigh evidence at [this] stage.” Barrett v. Covington & Burling, LLP, 979 A.2d 1239, 1244 (D.C. 2009). Making credibility determinations, weighing the evidence, and drawing legitimate inferences from the facts are *jury* functions, not those of a judge. Anderson, 477 U.S. at 255.

### **III. Analysis**

TPM’s Motion for Summary Judgment requests that the Court to grant its Motion for Summary Judgment because (1) TPM “shows that it has standing to bring its claims”; (2) “the District of Columbia Freedom of Information Act (DC FOIA), DC Code 2-531, *et seq.*, requires that certain budget-related documents be made public, with or without a FOIA request” and “are not protected by the deliberative process privilege”; (3) “that the [District’s] affirmative defenses regarding the separation of power and the executive privilege lack merit; and (4) “that [TPM] is entitled to the relief that it seeks.” Pl’s Mem. at 1, 3.

In opposition to TPM’s Motion but in support for its Motion for Summary Judgment, District argues (1) that the documents are protected by the deliberative process privilege; (2) that the documents are protected by executive privilege “and requiring their public disclosure would

violate separation of powers principles”; and that even if none of that is true, (3) “D.C. FOIA does not allow for the private enforcement of its publication requirements, and even if it did,” TPM lacks standing to ask the Court to do so. Def. Mot at 1-2.

Upon a thorough consideration of the pleadings, the Court finds that the District fails to meet the standard necessary for Summary Judgment, and consequently denies the District’s instant Motion for Summary Judgment. However, the Court does find that TPM meets the standard necessary for Summary Judgment, and thus grants TPM’s instant Motion for Summary Judgment. The Court addresses each of the issues addressed in the Cross Motions for Summary Judgment below.

**a. STANDING**

In terms of standing, neither party disputes that TPM filed a FOIA request to the Executive Office of the Mayor (EOM) on October 19, 2019, nor do the parties disagree regarding the terms of D.C. Code §§ 2-537 or D.C. Code § 2-536(b). According to D.C. Code §§ 2-537(a), (a)(1), “any person denied the *right* to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection... [i]f the Mayor denies the petition or does not make a determination within [10 days]..., or if a person is deemed to have exhausted his or her administrative remedies..., the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.” (emphasis added).

TPM argues that it has standing based on (1) “District’s refusal to produce the requested documents” under FOIA pursuant to D.C. Code §§ 2-537; and (2) “District’s refusal to post online the requested documents” even though required by D.C. Code § 2-536(a)(6A) and

subsequently causing the injury due to TPM's inability to review the necessary documents. Pl's Mem. at 3, 4.

However, the District states that (1) D.C. FOIA does not provide a cause of action to enforce the requirements to publish documents on the internet; (2) TPM only made a generalized grievance and lacks standing to seek prospective publication of Documents as relief." Def. Mem. at 25, 27, 29. Further, the District argues that D.C. FOIA does not provide a method for members of the public to enforce the requirements to publish documents on the internet; however, as stated in the above sections of the D.C. code, § 2-537 gives any person denied the *right to inspect a public record* standing to bring it before the Superior Court once their petition is denied by the Mayor or they exhausted their administrative remedies.

TPM submitted a D.C. FOIA request to the Executive Office of the Mayor, on October 19, 2019, even though the budget requests were required to be publish online by statute, and a written request was not necessary; however, no response was received. Compl. 3; Ex. 3. "On November 15, 2019, TPM called the FOIA office for the Executive Office of the Mayor," it was told to expect a call back but one was never received. *Id.* On December 4, 2019, Ms. Mona Patel, OSSE's FOIA officer, "sent TPM a copy of the Mayor's Proposed Budget regarding OSSE for fiscal year 2019"; however, "the proposed budget sent over did not include the budget request made by OSSE to the Mayor's office." *Id.* at 4; Ex. 2. When TPM informed Ms. Patel, the "District refused to produce the requested documents and claimed that production was not necessary because the documents are protected by deliberative process privilege." Compl. at 4. TPM then appealed the decision to the Office of the Mayor on January 22, 2020 but received no responsive documents. *Id.*; Ex. 4. TPM again wrote to the Office of the Mayor on February 12, 2020 requesting a decision but received no response. TPM's in their FOIA request asks for "(1)

budget requests...including Form B; (2) any similar documentation describing in detail the agencies' budget needs or requests...; (3) information identifying corresponding totals from the final approved budget.” The District issuing a blanket rejection, did not seem to even try to work with the Plaintiff to narrow down the requested documents as Plaintiff mentioned in their FOIA request. Ex. 3. Pursuant to D.C. Code § 2-532(e), no response is the same as a denial and TPM proceeded as directed by D.C. Code § 2-537 and requested a remedy to this Court.

District also states that TPM has not alleged sufficient injury in its request for online publication of the budget documents, and therefore lacks standing. Def. Mem. at 27. The District claims TPM has failed to show they suffered an injury in fact — “an invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent.” *Id.* (citing Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992)). Instead, the District claims TPM has only asserted a harm that is a “generalized grievance” because it is “shared in substantially equal measure by all or a large class of citizens.” *Id.* at 27-28 (citing Warth v. Seldin, 422 U.S. 490, 499 (1975)). TPM asserts they have suffered an injury because the District failed to publish the documents online and further refused to otherwise provide them pursuant to D.C. Code § 2-536. Pl’s Mem. at 4.

The District’s states that the injury of TPM’s is a generalized grievance and it mentions that “[o]nly if the Mayor denies” a request for a public record “is the requester allowed to go to court....” Def. Mem. at 26. The Court disagrees. However, D.C. Code § 2-537 explicitly mentions the denial of the *right* to inspect a public record, not the denial of the request. If a person is denied the *right* to inspect a public record, that person has the right to petition the Mayor, D.C. Code § 2-537(a), and if the Mayor denies or fails to respond within ten (10) business days, the “person seeking disclosure may institute proceedings for injunctive or

declaratory relief.” D.C. Code § 2-537(a)(1). “The Court may enjoin the public body from withholding records and order production of records improperly withheld.” D.C. Code § 2-537(b). Contrary to the District’s interpretation, FOIA provides avenues for TPM, which it followed: TPM requested the documents from the Mayor, failed to receive a timely response, contacted the office and was told that the documents could not be produced, petitioned the Mayor and received no response. Therefore, TPM indeed has the right to bring a private suit enjoining the District as they have exhausted their administrative remedies with respect to such request. Compl. 3-5.

Furthermore, D.C. Code § 2-536(a)(6A) specifically states that “[b]udget requests, submissions, and reports available electronically that agencies, boards, and commissions transmit to the Office of the Budget and Planning *during* the budget development process, as well as reports on budget implementation and execution prepared by the Office of the Chief Financial Officer, including *baseline budget submission and appeals*, financial status reports, and strategic plans and performance-based budget submissions.” (emphasis added) should be made available publicly without the need for a written request. The documents were not online as required by statute, TPM requested them via FOIA and was denied. TPM has standing to bring its claims before the Court. *See Public Citizen v. U.S. DOJ*, 4911 U.S. 440, 449 (“The fact that other citizens or groups of citizens might make the same complaint after unsuccessfully demanding disclosure under FACA does not lessen appellants’ asserted injury, any more than the fact that numerous citizens might request the same information under the Freedom of Information Act entails that those who have been denied access do not possess a sufficient basis to sue.”)

As such, the Court finds that TPM possesses the necessary standing to pursue the Court’s review of its request and to enforce it, if the Court deems it to be necessary.

## **b. FOIA REQUEST AND DELIBERATIVE PROCESS PRIVILEGE**

In TPM's FOIA request, TPM requests "budget requests for fiscal year 2019," specifically "expenses and budgetary items." Compl. at 3. Moreover, TPM's FOIA request further listed "policy development and compliance issues impacting 2-5 year-olds, data systems, the provision of screenings, evaluations, and eligibility determinations, and the provision of specialized instruction and related services including special education transportation." *Id.* D.C. Code § 2-536 (6A) expressly states that "[b]udget requests, submissions, and reports available electronically that agencies, boards, and commissions transmit to the Office of the Budget and Planning during the budget development process, as well as reports on budget implementation and execution prepared by the Office of the Chief Financial Officer, including baseline budget submissions and appeals, financial status reports, and strategic plans and performance-based budget submissions" are specifically made public, even if a request is not submitted.

In response, the District invokes FOIA's Exemptions From Disclosure provision pursuant to D.C. Code § 2-534(a)(4), also known as "the deliberative process privilege," which protects "[i]nter-agency or intra-agency memorandums or letters." D.C. Code § 2-534(a)(4); Def. Mem. at 6. The District asserts that "[t]he Mayor and OCFO have long considered documents like those the plaintiff requested to be shielded from disclosure by the deliberative process privilege," that "advisory opinions, recommendations and deliberations" are sheltered, that disclosure will discourage candid discussion, and importantly, that the budget requests are both pre-decisional and deliberative. Def. Mem. 6-8; Reed Decl. ¶ 2-3; Cannady Decl. ¶ 3. The District also

emphasizes that D.C. Code 2-534(c)'s mention of "other law" is speaking to law outside of the D.C. FOIA statutes. Def. Mem. at 11.

The Court does not find the District's arguments persuasive. D.C. Code § 2-536(a)(6A) expressly mandates that "[b]udget requests... *during the budget development process*, as well as reports on budget implementation and execution prepared by the Office of the Chief Financial Officer, including *baseline budget submissions* and *appeals*, financial status reports, and strategic plans and performance-based budget submissions" are statutorily required to be made public. Furthermore, the District's interpretation of D.C. Code 2-534(c) would narrow the meaning of "other law" where D.C. FOIA urges construction of the law "toward *expansion* of public access," D.C. Code § 2-531, and "the right of access [is] to be generously construed, while the statutory exemptions from disclosure are to be narrowly construed, with ambiguities resolved in favor of disclosure." Fraternal Order of Police v. D.C., 79 A.3d 347, 354 (D.C. 2013). The District argues that if the Council had meant to refer to D.C. FOIA it would have used specific language such as, "sections of this subchapter" or "provisions of this subchapter"; however, the Court believes that Council intended "other law" to mean "other" law *including* D.C. FOIA statute. If the Council intended to exclude D.C. FOIA statute, it would have specifically stated as such, since generally D.C. FOIA is construed to be open to the public.

Likewise, the Court is hesitant to accept that the Council would draft conflicting statutes, and withholding such documents, that are expressly enumerated to be public, would be contrary to the intent of the Council. Amicus at 3. The documents that the District states are pre-decisional and deliberative are listed in 6(A) as documents that need to be produced and published. *See* D.C. Code § 2-536(a)(6A). *See also*, Amicus at 3 (Council added paragraph (6A) to D.C. Code § 2-536(a) specifically to ensure that members of the public have access to

‘documents and reports that are key part of budget analysis and deliberations...to ensure that ‘residents can participate more fully in the budget dialogue’ and to ‘promote accountability by making the financial operations of the District government more transparent.’”).

As such, as presented by TPM and the District, there are no issues of genuine material facts, and it is clear that the Council’s intent was to expand the public’s access, not narrow, the Court grants TPM’s Motion for Summary Judgment but denies Defendant’s Motion for Summary Judgement.

**c. EXECUTIVE COMMUNICATIONS AND PRINCIPLE OF SEPARATION OF POWERS**

Finally, the District contends that “the documents are executive communications and requiring their public disclosure will violate separation of powers principles.” Def’s Mot. at 1. The District asserts that the “Mayor’s nondisclosures of the documents is not a ‘policy preference.... [and] [t]he executive communications privilege is rooted in separation of powers and protects information that is vital to carrying out ‘the enumerated power of the [executive].’” (citing *In re Sealed Case*, 121 F.3d 729, 743 (D.C. Cir. 1997)). Furthermore, the District argues “that disclosure of the documents would ‘interfere with the Mayor’s ability to obtain candid and comprehensive advice and recommendations from her agencies. Def’s Reply at 7 (citing *Reed Decl.* ¶ 11). The District further argues that the executive privilege exists “to ‘preserve[] the President’s ability to obtain candid and informed opinions from his advisors and make decisions confidentially’”, Def. Mem. at 20 (citing *Loving v. U.S. Dep’t of Defense*, 550 F.3d 32, 37 (D.C. Cir. 2008)), and “if these records were disclosed outside the executive branch officials to whom they are entrusted, this disclosure would chill the full, candid and objective advice giving that is

needed for executive decision making.” *Id.* (citing Judicial Watch, Inc. v. Dep’t of Justice, 365 F.3d 1108 (D.C. Cir. 2004)).

Next the District argues that the Council is “attempt[ing] to expand its role beyond those delegated in the Charter is inconsistent with separation of powers” and that D.C. Code § 1-202.42(a) expressly limits the Council’s role in the process of [preparing and submitting an annual budget]” Def. Mem. at 9-10. Likewise, “when powers are reserved for one branch, no burdening is permissible, and any interference is undue.” *Id.* at 11.

However, the power of the budget is a shared power between *both* the legislative and executive branches. “[T]he legislative power granted to the District . . . is vested in and shall be exercised by the Council,” D.C. Code § 1-204.04, and “the allocation of the District’s financial resources is a ‘core legislative function.’” Washington, D.C. Ass’n of Realtors, Inc. v. D.C., 44 A.3d 299, 305 (D.C. 2012). “The Mayor’s role in the budgeting process is inherently collaborative and involves significant overlap with other Charter entities like the Council and OCFO, each of which must carry out significant Charter-assigned budget responsibilities of its own.” Amicus Brief at 6-7. The District even states that when there are powers that overlap or converge, “separation of powers is only violated when one branch ‘impermissibly burdens[s] or unduly interfere[s]’ another’s ‘core functions.’” Def. Mem. at 11; *See Bergman v. District of Columbia*, 986 A.2 1208 (D.C. 2010). The District also states that the Charter *expressly limits the Council’s* role; however, upon review of the statute the Court does not believe that the Charter expressly limit the Council’s role. The first few words of the statute state, “[a]t such time as the Council may direct . . .” which seems to state that the Mayor is to provide these budget submissions under direction of the Council. D.C. Code § 1-204.42(a). Moreover, the Court finds D.C. FOIA’s “Public Policy” provision persuasive and on point, which states “all persons are

entitled to full and complete information regarding the affairs of government.” D.C. Code § 2-531.

Lastly, the Court is not persuaded by the District’s argument that disclosure will “chill full, candid” conversation. Def’s Mem. at 24. FOIA’s public policy goals urge the Court to construe its provisions in favor of expansion and transparency in government. D.C. Code § 2-531. In Ms. Reed’s declaration, she states that “each year in September or October, the Mayor solicits budget information, recommendations, and advice from her agencies for the upcoming fiscal year.” Reed Decl. ¶ 2. TPM’s FOIA request which was submitted in October of 2019 was requested a full year after the initial solicitation for information and at least six months after the Mayor submits her budget proposal to the Council. Reed Decl. ¶ 3. A budget request made after budget deliberations occurred, and not *during* the Mayor’s discussions with agency leaders and the CFO, and subsequent submission to the Council, does not interfere with the Mayor’s access to ability to obtain “candid and informed opinions from [her] advisors....” Def. Mem. at 20. The District also states that the “agency directors submit their budget requests and recommendations to OBP” and not directly to the Mayor. *Id.* at 21.

Furthermore, as the Court has stated in the past, it will not at this juncture, recognize the Executive Communications Privilege. *See* February 12, 2021 Order, pp. 13. Even if the Court wishes to apply the Executive Communications Privilege, the District *still* has not met its burden in showing it applies here.

Not every person who plays a role in the development of presidential advice, no matter how remote and removed from the President, can qualify for the privilege . . . [T]he privilege should apply *only to communications authored or solicited and received* by those members of an *immediate* White House adviser’s staff who have broad and significant responsibility for investigating and formulating the advice to be given the President . . . Only communications at this level are close enough to the President . . . to pose a risk to the candor of his advisors.

Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Homeland Sec., 592 F. Supp. 2d 111, 118 (D.D.C. 2009) [hereinafter CREW] (emphases added). “The presidential communications privilege should never serve as a means of shielding information regarding governmental operations that do not call ultimately for direct decision-making by the President.” In re Sealed Case, 121 F.3d 729, 752 (D.C. Cir. 1997).

Here, the District has not met its burden to show that TPM’s budget request fall within this privilege. As previously discussed, *see supra* Section III.A.(c), the power of the budget is a shared power between the Mayor and the Council. D.C. Code § 1-204.48(a)(3); D.C. Code § 1-204.24d(26). Further, the Mayor does not formulate the budget on her own, but with the advice of the CFO. D.C. Code § 1-204.48(c); D.C. Code § 1-204.24d(26).

Therefore, the Court grants Plaintiff’s Motion for Summary Judgment but denies Defendant’s Motion for Summary Judgment.

#### **IV. Conclusion**

As the Court grants TPM’s Motion for Summary Judgment in its entirety but denies the District’s Motion for Summary Judgment, the District has fourteen (14) days from the instant Order, on or before **August 5, 2021**, to produce the documents requested TPM’s FOIA request and to comply with D.C. Code § 2-536(a)(6A). Consequently, the Court will vacate the parties’ July 23, 2021, Initial Scheduling Conference and close the case.

For the aforementioned reasons, it is this 23<sup>rd</sup> day of July 2021, hereby,

**ORDERED** that the TPM’s Opposed Motion for Summary Judgment is **GRANTED**; it is,

**FURTHER ORDERED** that District’s Opposed Motion for Summary Judgment is **DENIED**; it is,

**FURTHER ORDERED** that the Initial Scheduling Conference set for July 23, 2021 is hereby **VACATED**; it is,

**FURTHER ORDERED** that Defendant **SHALL RESPOND** to TPM'S FOIA request **on or before August 5, 2021**; it is,

**FURTHER ORDERED** that the Defendant **SHALL PUBLISH** the required documents pursuant to D.C. § 2-536 **on or before August 5, 2021**; and it is,

**FURTHER ORDERED** that this case shall be **CLOSED**.



**Heidi M. Pasichow**  
**Associate Judge**  
(Signed in Chambers)

**Copies e-served to:**

Todd A. Gluckman  
Kathleen L. Millian  
Patrick A. Sheldon  
Nicholas Soares  
*Counsel for Plaintiff*

Fernando Amarillas  
Honey Morton  
*Counsel for The District of Columbia*