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Clerk of the Court

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

PARTNERSHIP FOR CIVIL JUSTICE FUND
617 Florida Ave. NW
Washington, D.C. 20001

Plaintiff,

v.

THE DISTRICT OF COLUMBIA

Serve: Muriel Bowser,
Mayor of the District of Columbia
1350 Pennsylvania Ave. NW
Washington, D.C. 20004

Serve: Karl A. Racine
Attorney General
441 4th St. NW
Washington, D.C. 20001

Defendant.

Civil Action No. _____

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

[Freedom of Information Act, D.C. Code § 2-531, *et seq.*]

1. This action is brought under the District of Columbia's Freedom of Information Act ("FOIA"), D.C. Code § 2-531, *et seq.*, as amended. Plaintiff seeks injunctive and other appropriate relief for the disclosure and production of information regarding traditional and historic public fora sidewalk and street areas abutting the Trump International Hotel in the Old Post Office Building in Washington, D.C., including communications and

agreements restricting public access in favor of priority, restricted or exclusive use for the private gain of the Trump Organization.

2. This lawsuit seeks the release of information being held by the municipal government regarding specific and particular aspects of the "deal" reached with the Trump Organization to turn the historic Old Post Office on Pennsylvania Avenue into a Trump International Hotel. Specifically, it seeks disclosure of information regarding agreements entered into by the District of Columbia that appear to take public space on "America's Main Street" traditionally open for First Amendment-protected free speech and dissent, and create a "buffer zone" around the Trump Hotel restricting access to exclusive or priority use of the Trump Organization. The Partnership for Civil Justice Fund (PCJF) has requested documents, communications, applications, evaluations, permits and agreements regarding the use of public sidewalk and/or street space abutting the Trump Hotel. This information has been sought by the PCJF for over five months, yet the municipal entities in whose possession it remains have refused to produce any responsive information despite a legal obligation to make such information public. Similar requests have been made of federal agencies, and such requests are the subject of separate litigation.

3. This lawsuit is not about the Old Post Office Building, *per se*. It is about the public spaces along Pennsylvania Avenue in proximity to that property, including the sidewalks, the large plaza surrounding the Benjamin Franklin statue at the corner of 12th Street NW and Pennsylvania Avenue, and Pennsylvania Avenue itself. Such spaces have been historically accessible to the public for protest, dissent, assembly and special events, as they constitute quintessential public forums. Pennsylvania Avenue is under the

jurisdiction of the District of Columbia. The sidewalks and plaza space abutting the Trump Hotel are under the jurisdiction of the federal government.

4. Few avenues, and public spaces, are as historically significant for free speech and public assembly as are Pennsylvania Avenue and the sidewalks and plazas abutting it. Throughout the Nation's history, these public spaces literally constitute the ground on which the people stand, as they have marched and rallied on the avenue and its sidewalks and plazas in dissent and free expression, often challenging those institutions of power and authority whose buildings or headquarters abut that august avenue, known as "America's Main Street." These public spaces have been consecrated by the expressions of democracy and dissent of the people of the United States. That ground may now be pulled out from underneath the feet of those who wish to engage in protest on or along Pennsylvania Avenue in proximity to the new Trump International Hotel.
5. In 1965, the public spaces and historic buildings of Pennsylvania Avenue - - upon consideration of this venerable history - - were designated a National Historic Site, then only the thirty-third such site in the Nation's history to secure such protected status.
6. The public is entitled to know whether and to what extent the municipal and federal governments have entered into agreements that will suppress or extinguish free speech in proximity to the building leased to the Trump Organization, which is led by a presidential candidate who has stated an extraordinary and open hostility to the First Amendment. Trump has called for protesters to be "roughed up" and "carried out on a stretcher," offered to pay the legal fees of persons who assault protesters, deployed security who have assaulted protesters and destroyed protest signs outside the Trump Tower on Fifth Avenue in New York City, suggested he would be in favor of "closing" the internet under

certain circumstances, indicated that he would like to rewrite libel laws to suppress unflattering press coverage, and revoked press credentials from The Washington Post, The Huffington Post, Buzzfeed, Univision, The Daily Beast, The Des Moines Register and Politico.

7. In 2013, the U.S. Government announced a new institution of power and politics would be moving to Pennsylvania Avenue, the Donald Trump Organization. The U.S. General Services Administration announced that it would lease the historic Old Post Office Building to the Trump Organization, where it would be renamed after Mr. Trump and become a hotel, convention center and spa.

8. Whether Mr. Trump wins or loses, he has become a political leader whose prominent visibility, openly racist and sexist views, and significant influence on public discourse and policy will make his building on Pennsylvania Avenue a natural beacon for public protest. Trump's marriage of capital interests, political views, Presidential ambitions, and reality TV showmanship invites protest and free speech and assembly on the public spaces near the Trump Hotel. Pennsylvania Avenue and its sidewalks, running from the White House to the Capitol grounds, are, as above, primary locations for free speech activities on all manner of issues in the Nation's Capitol and have also been the site of many cultural events of national and local significance. The public spaces of Pennsylvania Avenue including the sidewalks and plaza abutting the Trump Hotel do not belong to Donald Trump.

9. The information regarding the Trump International Hotel in the Old Post Office Building in Washington, D.C., has emerged as a topic of public discussion during the 2016 presidential campaign. A prime talking point of the Donald Trump campaign, the Trump

Hotel has been referenced as evidence of his capability to run the United States. Speaking of his newest hotel, Mr. Trump said, “It’s going to be amazing … It’s a great thing for the country. It’s a great thing for Washington.” His son, Eric Trump, touted the planned Hotel in his primetime appearance during the Republican National Convention stating, “Throughout my father's career, he has been repeatedly called on by government to step in, save delayed, shuttered, and grossly over-budget public projects, [including] the iconic old post office in Washington, D.C. … It's time for a president who can make America great again, ahead of budget, and ahead of schedule, too.”

10. The “deals” struck by Mr. Trump for his hotel business have also been a point of discussion for those who are concerned about the prospect of a Trump presidency: “Trump says he wants to run the nation like he’s run his business,” former Mayor Michael Bloomberg told the Democratic National Convention, referencing Trump’s history of bankruptcies and non-payments to contractors. “God help us,” continued Mr. Bloomberg, “I’m a New Yorker, and I know a con when I see one.” On August, 1, 2016, Warren Buffett critiqued how Trump has run his hotel business, stating that over a decade, his Atlantic City hotel venture "los[t] money every year, every single year, and he takes out $44 million in compensation during that period.”
11. The abnormality of the “deal” signed between the Trump Organization has emerged as a contentious issue from concerns about the long duration of a lease and the low price tag paid by the lessee among other “business” considerations, to the use of Colony Capital as a co-investor to win the bid over other established hoteliers followed by Colony’s withdrawal from the deal after the bidding battle was won.

12. This lawsuit is sparked by the concern that local and federal agencies appear to have agreed to Mr. Trump's demand to place restrictions on sections of Pennsylvania Avenue and its sidewalks, "America's Main Street," that have been used as a site of free speech-protected activity, for the restricted, priority or exclusive use and personal profit of the Trump Organization.

13. These issues coupled with the ongoing refusal of both federal and District officials to respond in a timely way to PCJF's FOIA requests regarding the alteration of historic public spaces for First Amendment-related activity raise serious questions about what information is being kept from the public's knowledge. The very bright light of the 2016 Presidential Campaign makes the stubborn refusal to comply with their legal obligations regarding public records disclosure under their respective Freedom of Information Acts deeply concerning. It leads the public to wonder whether they are hiding something regarding the "deals" struck with the Trump Organization as it affects this historic public fora and site for free speech and assembly and the impact on the public's right of access for free expression.

14. The Washington Post reported on February 26, 2016, that the Trump Organization had been granted by the municipal government the exclusive priority use of a traffic lane on Pennsylvania Avenue for valet parking, which would force long-standing cultural events such as the Cherry Blossom Street Festival to move and would have uncertain effects on the street protests that have at moments of historic significance filled all lanes of the avenue with democratic action and free speech demands. Other information available suggests that federal agencies, which are the subject of separate litigation, have entered into an easement regarding the large plaza / national parkland surrounding the Benjamin

Franklin statue which fronts the hotel, suggesting this plaza is off-limits to free speech activity

15. On February 29, 2016, the Partnership for Civil Justice Fund filed Freedom of Information Act requests with the District of Columbia Government seeking disclosure of communications and agreements in the possession of the D.C. Government regarding the use of public space (i.e., sidewalk and street space). A separate request, not the subject of this litigation, was filed with federal authorities. The request seeks all communications of negotiations for restrictions on this historic public space as well as any determinations reflecting evaluations of the impact of the Trump Organization's apparent privatization of these spaces on the public interest, including specifically on the exercise of First Amendment-protected activity. It seeks all communications, emails, requests, applications, planning documents, memoranda of understanding, permits or other authorizing documents that would cede this space from the public to the Trump Organization.

16. The intent of the PCJF is, in the immediate, to determine the scope of any such agreements relating to public space, as information has been disclosed only haphazardly and in piecemeal and partial fashion by the involved parties. The PCJF intends to conduct an analysis of the cost and benefit upon free speech of any such agreements, including whether core constitutional rights and interests have been restricted. All information, including raw material as well as expert analysis, will be published and disseminated in order to educate the public and officials on this issue of key public interest.

17. Time is of the essence. Trump has thrust himself and his politics into the political realm, making his self-named hotel the physical site of his Washington, D.C., presence. The

slated opening for the Trump Hotel is September 2016. Its significance for politics and protest is self-evident. With the approach of the presidential election, and Donald Trump seeking to be the person who determines matters of public policy, war or peace, mass deprivation of civil rights on the basis of ethnicity, religion or national origin, the use of these public spaces - - and the decisions and determinations to remove or restrict them from public access - - is of immediate consequence to free speech interests and the public interest.

**JURISDICTION AND VENUE**

18. This Court has jurisdiction over this action pursuant to D.C. Code § 2-537(a)(1) (D.C. FOIA) and § 11-921 (civil jurisdiction).

19. Venue properly lies with this Court as the defendant is the District of Columbia Government, the actions forming the basis of the claim occurred principally within the District of Columbia and the agency records at issue are located in the District of Columbia.

**PARTIES**

20. PARTNERSHIP FOR CIVIL JUSTICE FUND (PCJF) is incorporated pursuant to the District of Columbia Non-Profit Corporations Act and is based and headquartered in the District of Columbia. The PCJF is a not-for-profit legal and educational organization which, among other things, seeks to ensure that Federal, state and local governments respect the First Amendment rights of free speech and assembly. It also has a programmatic emphasis on government transparency and accountability. Among the focuses of the PCJF's work is the privatization of public space, in particular restrictions and limitations placed on the ability of the people to gather and engage in First

Amendment-protected activity, dissent and political assembly. As a Washington, D.C.-based national organization, the PCJF is also concerned with the loss of access to public space that has been historically used for cultural activities and special events that add to the character and quality of life in the District of Columbia for those who live here.

21. The DISTRICT OF COLUMBIA is a municipal corporation, subject to suit, that runs and constitutes the local government of the District of Columbia.

22. The DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT (MPD) is an agency within the executive branch of the District of Columbia government. The MPD is the primary law enforcement agency for the District of Columbia and is charged with allowing and enforcing laws pertaining to access to public space including for demonstrations, protests and public assemblies.

23. The Mayor is the head of the executive branch of government of the DISTRICT OF COLUMBIA. The EXECUTIVE OFFICE OF THE MAYOR is the Mayor's office.

**FACTUAL BACKGROUND**

24. By letters dated February 29, 2016, and transmitted via e-mail to the respective Freedom of Information Act (FOIA) officers, the PCJF filed substantially identical FOIA requests with the Executive Office of the Mayor and the Metropolitan Police Department seeking public records relating to the use of the Pennsylvania Avenue and the public sidewalks abutting the Old Post Office Building.

25. The FOIA requests sought "all documents, communications, applications, evaluations, permits and agreements regarding use of public sidewalk and/or street space abutting the Trump International Hotel in the Old Post Office Building."

26. The requests specifically included, but were not limited to, "all records reflecting communications, emails, discussions, applications, planning documents, memoranda of understanding, permits, authorizing documents, contracts, assurances, meeting notes, reports, minutes, agreements, evaluations, determinations, maps, recommendations and analysis, regarding priority, reserved, or exclusive access to and/or use of any portion of the sidewalks and Pennsylvania Avenue abutting the Trump International Hotel at the Old Post Office Building."

27. An underlying concern is that these quintessential public spaces have been effectively privatized for the benefit of the Trump Organization, including effectively removing these spaces from access by the public for purposes of protest, demonstration, dissent and public assembly as well as cultural special events and festivals.

28. By way of illustration and not limitation, the FOIA requests sought:

    a. all communications involving negotiations with, requests, inquiry from, and responses to, any agent or representative of the Trump Organization, Trump Hotels, or Donald Trump regarding reserved, priority, exclusive or non-exclusive use of sidewalk and/or street space; all documents, including contracts, reflecting negotiations for the agreement referenced in the *Washington Post* [article dated February 26, 2016, "Thanks to Trump's hotel, D.C. street festivals have to make a few changes"]; all documents referencing interpretation or implementation of any agreements;

    b. all communications with, requests, inquiry and responses regarding use of this sidewalk and/or street space by any organization or individual for demonstrations or special events;

    c. all communications regarding use of, or access to, this sidewalk and/or street space involving the D.C. Metropolitan Police Department, Mayor (current or past) or any representatives of the Office of the Mayor, or any other representative of the District of Columbia; including with any representative of the federal government, including the General Services Administration and/or the National Park Service and/or the Department of the Interior;

d. all records reflecting evaluation of the impact of reserved, priority or exclusive use of the sidewalks and/or street space abutting the Trump International Hotel on the exercise of First Amendment protected activity.

29. The records are not sought for commercial use.

30. The FOIA requests are made by the PCJF as an educational 501(c)(3) organization for the purposes of legal and scholarly research and for publication and dissemination to the public.

31. In its FOIA requests, the PCJF described that:

> This request is central to transparency that is required for there to be an accurate recounting and assessment of the District of Columbia government in regard to the privatization of public space and restrictions and limitations placed on the ability of the people of the United States to gather and engage in First Amendment protected speech and assembly.

32. In its FOIA requests, the PCJF described its background and the public interests it advances, in part, as follows:

> The Partnership for Civil Justice Fund is a non-profit, 501(c)(3) tax exempt charitable legal and educational organization which, among other things, works to ensure transparency and openness in government operations. It also works to ensure constitutional conduct within government practices affecting civil and constitutional rights. The PCJF also seeks to educate the public on the issues of civil and constitutional rights, and civil liberties. A primary organizational purpose is information dissemination. The material requested is not for commercial use and is sought for legal and scholarly review and research by the attorneys and staff of the PCJF and for publication and dissemination to the public.

33. In its FOIA requests, the PCJF reviewed select history of its work, including acknowledgment by this Court in independent FOIA litigation of "its core function of conducting police oversight." (referencing *Partnership for Civil Justice Fund v. District of Columbia*, 2009 CA 000748 B, Superior Court of the District of Columbia).

34. The PCJF further stated its intention to engage in analysis of the materials requested and to publish the results.

35. The PCJF qualifies as a "representative of the news media" as that term is used in FOIA jurisprudence for fee purposes, as the PCJF is an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work and distributes that work to an audience.
36. The PCJF additionally requested a fee waiver pursuant to D.C. Code § 2-532(b), where furnishing the information can be considered as primarily benefiting the general public.

**Response by the Executive Office of the Mayor.**

37. The FOIA request to the Executive Office of the Mayor (EOM) was transmitted via email to FOIA Officer Jim Slattery on February 29, 2016.
38. The EOM provided no initial acknowledgement in response to the February 29, 2016, FOIA request.
39. On April 11, 2016, the PCJF sent a follow-up e-mail to Mr. Slattery. The e-mail advised that "I am writing in follow-up to this FOIA request submitted by email on February 29, 2016 (see below). It is now three weeks past the period of 15 business days provided by the District of Columbia Freedom of Information Act to respond to the request, and we have received no response or notice of an extension. Please provide a status update and a response to this request."
40. The EOM did not respond to the April 11, 2016, follow-up e-mail.
41. On April 20, 2016, the PCJF sent a second follow-up e-mail to Mr. Slattery. The e-mail advised that "I am writing you in follow-up to this FOIA request submitted by email on February 29, 2016. I sent you a request for a status update on April 11, 2016, but have received no response to that or to the original request. Please immediately provide a status update and a response to this request."

42. Thereafter, also on April 20, 2016, Mr. Slattery transmitted a response. He stated, "My apologies for not getting back to you sooner. I'm afraid we've got a bit of a backlog and I'm working towards your request. I should begin review of documents in the next 10 days."

43. As of the date of the filing of the instant complaint, there has been no further information provided by the EOM.

44. As of the date of the filing of the instant complaint, the EOM has not made the requested records available nor has the EOM notified the PCJF of a determination to not make the records available.

**Response by the Metropolitan Police Department**

45. The FOIA request to the D.C. MPD was transmitted via email to FOIA Officer Donald Kaufman on February 29, 2016.

46. On March 2, 2016, the MPD sent an acknowledgment e-mail, assigning the request number as 2016-FOIA-02362 and assigning FOIA Specialist Genet Amare.

47. On March 23, 2016, Ms. Amare advised that "We are unable to process your request within the time allotted [fifteen business days pursuant to D.C. Code § 2-532(c)(1)], we are now invoking the ten (10) day extension that is provided under the FOIA statute. Pursuant to D.C. Official Code § 2-532(d) and 1 DCMR §§ 405.2 and 405.3, we are providing you with written notice of our intent to extend the deadline for our response to the above-referenced FOIA request by ten (10) business days."

48. On April 11, 2016, the PCJF sent a follow-up email to Ms. Amare. The e-mail stated "I am writing in follow-up to FOIA Request No. 2016-FOIA-02363. It is now past the

expiration of the 10-day extension you invoked to process the request. Please provide a status update and a response to this request."

49. On April 12, 2016, Ms. Amare responded, stating "We apologies [sic] any inconvenience this delay has caused you. However, our office is experiencing a backlog due to the number of requests we have received prior to your request and the voluminous nature of such requests. I am working diligently to provide a response to your request. Thank you for your patience and understanding."

50. On July 20, 2016, Ms. Genet sent an email reiterating, "our office is experiencing a backlog due to the number of requests we have received prior to your request and the voluminous nature of such requests. I am the FOIA Specialist assigned to your case and I would like to assure you that I am working diligently to provide a response to your request. Thank you for your patience and understanding."

51. As of the date of the filing of the instant complaint, there has been no further information provided by the MPD.

52. As of the date of the filing of the instant complaint, the MPD has not made the requested records available nor has the MPD notified the PCJF of a determination to not make the records available.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

53. The PCJF has filed a public records request dated February 29, 2016, with the Executive Office of the Mayor and the D.C. Metropolitan Police Department seeking production of public records.

54. The statutory time period of 15 business days, including allowable 10-day extension under unusual circumstances (as was invoked by the MPD only), has expired. *See* D.C.

Code § 2-532(c), (d) (providing response period including allowable extension). The D.C. Code mandates the District provide requested records or issue a determination that records will not be disclosed within the time provisions of subsections (c) and (d) of D.C. Code § 2-532.

55. As of the date of the filing of this complaint, no records and no determination to withhold records have been produced.

56. D.C. Code § 2-532(e) provides

> Any failure on the part of a public body to comply with a request under subsection (a) of this section [D.C. Code § 2-532] within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request. . .
>
> D.C. Code § 2-532(e).

57. Accordingly, the District of Columbia has categorically denied the February 29, 2016, FOIA requests and the PCJF has exhausted its administrative remedies.

58. Pursuant to D.C. Code § 2-537(a)(1), having exhausted administrative remedies under D.C. Code § 2-532(e), the PCJF is authorized to institute proceedings for injunctive or declaratory relief in the Superior Court of the District of Columbia.

**COUNT ONE**
**(Failure to produce public records in accordance with the D.C. Freedom of Information Act)**

59. The preceding paragraphs numbered 1 through 58 are incorporated by reference as if set forth herein.

60. The District of Columbia has unlawfully denied the PCJF's February 29, 2016, FOIA requests to the EOM and the MPD, including the PCJF's fee waiver request (to the extent any fees might be asserted by the agencies).

61. The District of Columbia has denied PCJF's request for a public interest fee waiver or unlawfully applied provisions of the D.C. Code disallowing assessment of certain or all fees, to the extent the agencies might assert applicable fees under the D.C. FOIA.

62. The District of Columbia has unlawfully withheld all responsive public records subject to release under D.C. Code § 2-532.

**PRAYER FOR RELIEF**

63. WHEREFORE, PCJF respectfully requests that this Court grant it the following relief:

    a. Declare that the denial of the PCJF's FOIA request, including any request for fee waiver or non-applicability of fees, was in violation of the D.C. FOIA;

    b. Enjoin the District of Columbia from withholding any records encompassed by the February 29, 2016, FOIA requests;

    c. Order that the District of Columbia produce the requested records within ten (10) business days;

    d. Award PCJF reasonable attorney's fees and costs incurred in this case pursuant to D.C. Code § 2-537(c); and

    e. Grant such further relief as the Court may deem to be just and appropriate.

August 3, 2016

Respectfully submitted,

/s/ Carl Messineo
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