

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-78**

June 12, 2015

VIA ELECTRONIC MAIL

Ms. B. Selah Lee-Bey

RE: FOIA Appeal 2015-78

Dear Ms. Lee-Bey:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Public Works ("DPW") improperly withheld records you requested under the DC FOIA.

Background

On April 3, 2015, you submitted a request to DPW seeking:

- Name of the TOWING COMPANY
- Name of Those Doing Business As the TOWING COMPANY
- The Bond (insurance information) and charter (license) for the TOWING COMPANY to business
- Notice of Infraction dated on or prior to the towing of the conveyance
- Property Record (PD Form 81) recording the towing of the conveyance
- The Towing Crane Number (bond for the Towing Crane itself)
- Delegation of Authority: Who Authorized the towing of the conveyance.

DPW acknowledged receipt of your FOIA request on the same date and informed you that "this agency does not have documents related to the insurance information and charter or license for the towing company. For that information, you must direct your request to the Department of Consumer and Regulatory Affairs."

On May 1, 2015, DPW closed your original request, having provided you with the eight responsive documents found in its search.

You appealed DPW's decision to the Mayor on June 2, 2015, arguing that DPW improperly withheld records and that "[t]hus far, no information regarding the tow company and those towing the conveyance [sic] has been provided." Upon this office's request to clarify your 36

page appeal¹, you stated in a June 3, 2015, email that DPW had provided you with some information but that you had been improperly denied the following information:

- 1) The charter and bond (insurance) of the tow truck/crane present on the day of the theft of my conveyance;
- 2) The charter and bond (insurance) of the Denver boot placed upon my conveyance;
- 3) The NAME of those responsible for the theft of my conveyance, including those that actually took the conveyance and whomever authorized the taking of my conveyance; and
- 4) The charter and bond (insurance) for those responsible for the theft of my conveyance.

The DPW provided this office with a response to your appeal on June 10, 2015. In its response, DPW represented that it had previously provided you with all responsive documents in its possession. DPW further represented that it conducted an additional search that resulted in locating one responsive document relating to insurance.² DPW does not assert that exemptions to DC FOIA apply to your request; to the extent that responsive documents exist, DPW states that these documents are maintained by different agencies. DPW directed to you to these relevant agencies in its original acknowledgment to your FOIA request dated April 3, 2015. Lastly, DPW has characterized your remaining requests as interrogatories, to which they are not obligated to respond to under DC FOIA.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, and decisions construing the federal statute are instructive and may be examined to construe the local law. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987); *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

¹ We note that this office’s jurisdiction is limited to “review[ing] the public record to determine whether [a record] may be withheld from public inspection.” D.C. Official Code § 2-537(a). As a result, we do not have the authority to review the non-FOIA legal claims asserted in your appeal.

² For the sake of efficiency, we are attaching the newly-located document to this decision instead of asking DPW to provide it to you directly.

Under the law, an agency “has no duty either to answer questions unrelated to document requests or to create documents.” *Zemansky v. United States EPA*, 767 F.2d 569, 574 (9th Cir. 1985). The law requires the disclosure only of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-30 (D.D.C. 2009). The request you submitted to DPW consisted largely of questions (e.g., “The NAME of those responsible for the theft of my conveyance, including those that actually took the conveyance and whomever authorized the taking of my conveyance”), and agencies are not required to respond to interrogatories under the DC FOIA.

To the extent that your initial request asked for specific documents, DPW provided you with responsive documents in its possession in its initial response, thereby satisfying its obligations under DC FOIA. Further, on appeal, DPW has proffered an additional document that was overlooked in its initial search. DPW has not denied you access to any documents in its possession. As DPW informed you in the April 3, 2015, email attached to your appeal, with regard to the additional insurance information you are seeking “[f]or that information, you must direct your request to the Department of Consumer and Regulatory Affairs.”

Conclusion

Based on the foregoing, we affirm the decision of DPW and dismiss your appeal. If you seek further insurance or charter information beyond what DPW has provided you, you should submit a FOIA request with the Department of Consumer and Regulatory Affairs.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s/ Melissa C. Tucker

Melissa C. Tucker
Associate Director
Mayor’s Office of Legal Counsel

cc: Nakeasha Sanders-Small, Assistant General Counsel, DPW (via email)