

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

May 27, 2009

[REDACTED]
Washington DC 200

Dear [REDACTED]

This letter responds to [REDACTED] appeal (the "Appeal") to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. §§ 2-351 *et seq.* ("DC-FOIA"), dated March 30, 2009. We forwarded [REDACTED] Appeal to the District of Columbia Department of Mental Health ("DMH") with a request for a response. DMH responded to the Appeal on April 9, 2009. The foregoing represents the appellate record, upon which this decision is based.

Background

In [REDACTED] original FOIA request, submitted on February 10, 2009, she sought information related to community based mental health-related facilities in Ward 5. Specifically [REDACTED] stated:

"This is a FOIA request for all records and documents that include any and all of the following information regarding community-based mental health-related facilities in Ward 5:

1. The number of these facilities in Ward 5.
2. The address and contact information for each facility in Ward 5.
3. The operator of each facility in Ward 5.
4. A description of the services provided or types of individuals treated in each facility in Ward 5.
5. The number of individuals resident (sic) in each facility in Ward 5.
6. The number of individuals treated or counseled annually in each facility in Ward 5."

[REDACTED] further indicated that the facilities should include, "community residential facilities, in-patient facilities, counseling facilities, treatment facilities and all other facilities licensed or overseen" by DMH.

By letter dated March 4, 2009, DMH responded to [REDACTED] FOIA request, indicating that it was providing her with the number of mental health community residence facilities and treatment providers in Ward 5, the owners, addresses and contact information for treatment providers, the owner information for mental health community residence facilities and the number of residents treated or housed in mental health facilities in Ward 5. DMH declined to release the addresses of mental health community residence facilities, citing D.C. Official Code §2-534(a)(2), "because the public disclosure of information which would constitute a clearly unwarranted invasion of the personal privacy of the mental health residents residing at these homes."

On April 9, 2009, [REDACTED] filed the instant appeal with our office, arguing that the withheld records she seeks are not exempt because she was not requesting documents of a personal nature. She states:

"I seek no names of any individuals residing at these facilities or using their services. These facilities receive public funds and are subject to public oversight. As such, the information I have requested is subject to disclosure."

In response to the Appeal, DMH further advanced its argument that the disclosure of this information would constitute an unwarranted invasion of personal privacy for the individuals who reside in these facilities and also argued that the disclosure would violate the D.C. Mental Health Information Act. Additionally, the agency provided [REDACTED] with the names of the owners, zip code, date of the license expiration, number of authorized occupants, type of license and an indication whether the operator was a contractor or independent for all of the mental health community residence facilities in Ward 5. However, DMH maintained that the addresses and telephone numbers of the mental health community residence facilities were exempt pursuant to D.C. Code §2-534(a)(4).

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 2001 Ed. §2-531. In furtherance of this policy, when searching for documents pursuant to a FOIA request, a public body should make "reasonable" efforts to search for the requested records. *Id.* §2-532(a-2). However, a search is not presumed unreasonable simply because it fails to produce all relevant material. *See Doe v. D.C. Metro Dep't*, 948 A.2d 1210, 1221 (2008) (citing *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (1990)). Furthermore, an agency is not required to produce records that they do not maintain in the ordinary course. Agencies are also not obligated to create or search for documents not within their possession or control. *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136 (1980).

1. *Would the Disclosure of the Addresses and Contact Information for Each Mental Health Community Residence Facility Constitute an Unwarranted Invasion of Privacy Under D.C. Official Code §2-534(a)(2)?*

In this Appeal [REDACTED] seeks the addresses of mental health community residence facilities. [REDACTED] does not seek the names and addresses of people receiving mental health services that reside at these mental health community residence facilities. Therefore, her interest in this information does not relate to any personal information but instead, relates to the facility itself. In fact, all of the listed information requested by [REDACTED] relates to the treatment facilities and the services they provide and not the identity of the recipients of mental health services. Additionally, there is no indication in the record that [REDACTED] intends to use this information to compromise the privacy rights of the residents living in these facilities. As such, I find that the privacy interests of the individuals who reside in these facilities were not implicated by [REDACTED] FOIA request and therefore, the requested information should not have been withheld pursuant to D.C. Code §2-534(a)(4).

2. *Would the Disclosure of the Addresses and Contact Information for Mental Health Community Residence Facilities Violate the D.C. Mental Health Information Act?*

I find that the disclosure of this information would not violate the D.C. Mental Health Information Act. In part, the D.C. Mental Health Information Act provides that:

(a) Except as specifically authorized by subchapter II, III, or IV of this chapter, no mental health professional, mental health facility, data collector or employee or agent of a mental health professional, mental health facility or data collector shall disclose or permit the disclosure of **mental health information** to any person, including an employer.

(b) Except as specifically authorized by subchapter II or IV of this chapter, no client in a group session shall disclose or permit the disclosure of mental health information relating to another client in the group session to any person.

(c) No violation of subsection (a) or (b) of this section occurs until a single act or series of acts taken together amount to a disclosure of mental health information.

D.C. Code §7-1201.02. [Emphasis Added.] The D.C. Mental Health Information Act defines “mental health information” as “any written, recorded or oral information acquired by a mental health professional in attending a client in a professional capacity” which “indicates the identity of a client” and “relates to the diagnosis or treatment of a client's mental or emotional condition.” D.C. Code §7-1201.01(9). I find that the disclosure of the address of a mental health community residence facility does not fall within the definition of mental health information as described by the D.C. Mental Health Information Act.

For these reasons, this matter is REMANDED to DMH to provide [REDACTED] with the addresses of the community based mental health-related facilities in Ward 5 within five (5) days of the date of this decision.

Sincerely,



Runako Allsopp
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Executive Office of the Mayor

cc: Mr. Matthew Caspari
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