

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

August 1, 2007

BY US MAIL

[REDACTED]
Estill, SC 299

Re: Freedom of Information Act Appeal

Dear [REDACTED]

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. §§ 2-531 *et seq.* (the "DC-FOIA"), dated July 19, 2007, initially received in this office on July 24, 2007 (the "Appeal"). We accept your Appeal as of that date. The D.C. Department of Corrections ("DOC") responded to the Appeal by letter, dated July 27, 2007 ("DOC's Response to Appeal"). You are referred to herein as the "Appellant." Appellant's DC-FOIA request, dated May 4, 2007 ("FOIA Request") sought the following:

"[D]ocumentation on a log of an attorney visit that took place while I was housed at CTF from March of 2004 to May of 2005 The attorney visit date in question is between April 29, 2005 through May 4, 2005. The attorney's name in question is [REDACTED]."

BACKGROUND

DOC responded to Appellant's FOIA Request in a letter dated June 1, 2007 ("DOC Response"). The DOC Response stated the staff conducted a due diligence search and did not locate any records responsive to Appellant's FOIA Request.

Appellant responded to the DOC Response in a follow up letter dated June 12, 2007. In the follow up letter, Appellant repeated the need to procure the documents stipulated in the initial FOIA Request. Appellant made further inquiry as to the whereabouts of the log book and also mentioned attorneys are required to sign an in and out form.

DOC responded to the follow-up letter with its own letter dated July 6, 2007. In this letter, DOC reiterated the log does not contain an entry responsive to Appellant's FOIA Request. Although no responsive records were found, DOC informed Appellant on August 26, 2004, [REDACTED] requested, and was provided, a copy of medical records maintained on Appellant.

Appellant argues on appeal the DOC search was unreasonable and DOC failed to follow proper retention policies. Appellant's Appeal also goes beyond the scope of the initial FOIA Request. On Appeal, Appellant requests DOC expand its search to encompass documents that may record when he left his unit at CTF to visit his attorney and not just the visitation logs. Because Appellant's secondary request was not made in the initial FOIA Request, it is outside the scope of the initial FOIA Request and therefore will not be addressed on appeal.

DISCUSSION

It is the public policy of the District government 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 aid of that public policy, the FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." *Id.* at § 2-532(a).

The adequacy of an agency's search under FOIA is determined by a test of "reasonableness," which may vary from case to case. *See Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Generally, an agency must undertake a search that is "reasonably calculated to uncover all relevant documents." *Id.* The reasonableness of an agency's search depends, in part, on how the agency conducted its search in light of the scope of the request and the requester's description of the records sought. *See Negley v. FBI*, 169 F.App'x 591, 595 (D.C. Cir. 2006).

Here, Appellant requests documents from an alleged attorney visit having occurred between April 29, 2005 and May 4, 2005. In response to Appellant's request, DOC searched the "Visitation Hall" log book where inmates' visits with their attorneys are routinely logged. DOC conducted a search of the log book for the period of April 29, 2004 through May 4, 2005 and did not find any records responsive to Appellant's request. Further, there is no evidence in the record to suggest the requested documentation of the attorney visit would be housed anywhere else. Because attorney visits are routinely logged in the Visitation Hall log and DOC conducted a search of said log, DOC's search was reasonably calculated to uncover all relevant documents.

Appellant also argues DOC has not followed proper retention policies regarding the documents sought. However this is not the case. The information Appellant seeks would be located in the CTF Visitation Hall log. After conducting a strict search of said



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log, no records responsive to Appellant's FOIA request were found. This does not mean the records were destroyed or are missing, as Appellant believes, nor has Appellant offered any evidence to support such an allegation. The log records do not contain any responsive documents to Appellant's FOIA Request. Accordingly, your appeal is hereby DISMISSED.

As the Appellant, you are free under the DC-FOIA to commence a civil action against the District of Columbia government at any time in the District of Columbia Superior Court.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew T. Richardson III".

Andrew T. Richardson III
Deputy General Counsel to the Mayor

cc: Oluwasegun Obebe