

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

September 23, 2008

Washington, D.C. 200

Dear

This letter responds to [REDACTED]' administrative 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 June 11, 2008 (the "Appeal") on behalf of [REDACTED] ("[REDACTED]"). We forwarded the Appeal to the District of Columbia Department of Health ("DOH"), with a request for a response. On June 20, 2008, DOH requested and was granted an extension to respond to [REDACTED]' FOIA request. However, DOH did not provide a response. The foregoing represents the appellate record, upon which we base this decision.

**Background**

In its initial April 8, 2008 FOIA request, [REDACTED] requested from DOH:

- 1) A complete list of any and all providers with whom District of Columbia Managed Care Organizations (MCOs) currently contract with for the provision of mental health services for youth in any residential setting, including but not limited to residential treatment centers and psychiatric residential treatment facilities, with an indication of the location of the facility.
- 2) The total number of children or youth receiving mental health services in a residential treatment center or psychiatric residential treatment facility funded by an MCO, and an indication of which facility each child or youth was in, on November 27, 2007.
- 3) The total number of children or youth receiving services funded by an MCO in a residential treatment center or psychiatric residential treatment facility, as of November 27, 2007, and who also receive services funded by the Department of Youth Rehabilitation Services, the District of Columbia Child and Families Services Agency, the District of Columbia Department of Mental Health, and/or the District of Columbia Public Schools.
- 4) Any and all surveys, inspections, monitoring, site visits or investigations completed by DOH and/or MCO's between January 1, 2006 and November 27, 2007 of any and all residential treatment centers or psychiatric residential treatment facilities, either in or outside the District, where youth receiving services from MCOs reside;

- 5) The total number of unusual incident reports filed with MCOs and/or DOH by residential treatment centers or psychiatric residential treatment facilities where youth receiving services from MCO's reside, between January 1, 2006 and November 27, 2007;
- 6) For the period January 1, 2006 to November 27, 2007, any and all unusual incident reports filed with MCOs and/or DOH by residential treatment centers or psychiatric residential treatment facilities where children and youth receiving services from MCOs reside that related to events qualifying as a "serious occurrence," as that phrase is defined in 42 C.F.R. § 483.374 and 42 C.F.R. § 483.352 (suicide attempts, deaths and serious injuries);
- 7) The total number of investigations conducted by DOH at residential treatment centers or psychiatric residential treatment facilities where children and youth receiving services from MCOs reside, between January 1, 2006 and the present;
- 8) For the period January 1, 2006 to the present, any and all surveys, inspections, monitoring or site visits or investigations completed by another D.C. agency or an MCO and shared with DOH; and
- 9) For the fiscal years 2006 and 2007, the total amount MCOs paid residential treatment centers or psychiatric residential treatment centers or psychiatric residential treatment facilities where children and youth receiving services from MCOs reside, as broken down by MCO.

#### Discussion

District of Columbia Code §2-531 provides that "the public policy in the District of Columbia is 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." *See Id.* In furtherance of this policy, D.C. Code §2-532(a-2) states that when searching for documents pursuant to a FOIA request, a public body should make "reasonable" efforts to search for the requested records. *See Id.* However, an agency is not required to produce records that they do not maintain in the ordinary course. Further, agencies are 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, 152 (1980).

After DOH did not respond to [REDACTED]'s FOIA request, [REDACTED] filed an Appeal on June 11, 2008. On June 20, 2008, DOH faxed a request to this office seeking an extension of time to respond to the Appeal. On June 27, 2008, DOH indicated by e-mail that it had contacted the relevant MCOs and that once it compiled all of the necessary information, DOH would provide an "in depth response" to [REDACTED]'s FOIA Appeal. Thereafter, DOH partially responded to the Appeal, representing in a July 2, 2008 e-mail to our office that it was meeting with [REDACTED] to provide some of the requested documents and that it was in the process of obtaining more information. On July 11, 2008, our office sent an e-mail to DOH inquiring whether the agency had prepared a response to the FOIA request; however, we did not receive a reply. Additional inquiry to [REDACTED] revealed that [REDACTED] also had not received a formal response from DOH and further, it had not received all of the requested documents.

Because DOH has not provided a formal response to our office, we are unable to determine whether DOH has made reasonable efforts to search for and produce the records requested. Therefore, DOH's partial denial of [REDACTED]'s FOIA request is VACATED and REMANDED to DOH, where it shall make a good faith effort to conduct a search based upon the parameters set forth in the FOIA request. Within five (5) days of the date hereof, DOH shall submit to this office and to [REDACTED] the detailed results of that effort. DOH may withhold records, or portions of records, under one or more of the statutory exemptions upon a clear marking or identification of the records (or portions) showing the deletions and an identification of the

exemption or exemptions relied upon in making those deletions. DOH may assess fees associated with the retrieval, review and reproduction of responsive records to the extent provided in the DC-FOIA, and shall notify ULS in advance of the expected cost.

If you are dissatisfied with this decision, 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,



Runako Allsopp  
Deputy General Counsel  
Executive Office of the Mayor

cc: Phillip L. Husband, Esq.  
Deputy General Counsel  
Department of Health  
825 North Capitol Street NE, Room 4121  
Washington, DC 20002