

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR**

**Freedom of Information Act Appeal: 2011-06**

February 18, 2011

Mr. Juan Garcia

Dear Mr. Garcia:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-531(a)(2001) (the “DC FOIA”), dated December 22, 2010 (the “Appeal”). You (“Appellant”) assert that the Metropolitan Police Department (“MPD”) improperly withheld records in response to your request for information under DC FOIA dated October 28, 2010 (the “FOIA Request”).

Background

Appellant’s FOIA Request, as modified by email dated November 22, 2010, sought records regarding calibrations for a mobile radar device or devices deployed on September 22, 2010, at the location described as “4021-3100 Blk N Capitol Street NW SB.” The modification was made as a result of MPD notifying Appellant that only mobile, not fixed, radar devices were deployed at that locations. At that time, MPD notified Appellant that in order to locate the records, it would need the type of incident, date of the event, citation number, vehicle identification tag, and the name of a person or company associated with the event. Appellant provided a date, but was either unwilling or unable to provide the other information requested.

In response, by email dated December 21, 2010, MPD stated that documents regarding the deployment of a mobile radar device are electronically filed by citation or traffic incident and, without the additional information requested, it was unable to conduct a reasonable search for the records.

On Appeal, Appellant challenges the denial of the FOIA Request. Appellant contends that the records requested are reasonably described and that, as a mobile radar device must be tested prior to deployment, the records should exist without regard to whether a traffic violation occurred. Based on the same, Appellant contends that MPD should be able to produce the records without the information requested.<sup>1</sup>

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<sup>1</sup> Appellant also raises the timeliness of the response of MPD as an issue. However, there is no

In its response, dated February 10, 2010, MPD reaffirmed its prior position. It restated that it contacted Appellant to get further information to conduct the search and that, as data for mobile radar devices are stored electronically, a reasonable search cannot be conducted without such information.

### Discussion

It is the public policy of the District of Columbia (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 § 2-537(a). In aid of that policy, the DC FOIA creates the right "to inspect ... and ... copy any public record of a public body . . ." *Id.* at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that the DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id.* at § 2-534.

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

Appellant contends that the records requested should not be difficult to locate. However, MPD states that the records requested are kept in electronic form and are unable to be retrieved without information regarding a particular traffic citation. This would be consistent with its position regarding photo red light cameras in *Wemhoff v. District of Columbia*, 887 A.2d 1004 (D.C. 2005).

It is well established that an agency is not "required to reorganize (its) files in response to (a plaintiff's) request in the form in which it was made," [footnote omitted] and that if an agency has not previously segregated the requested class of records production may be required only "where the agency (can) identify that material with reasonable effort." [footnote omitted].

*Goland v. CIA*, 607 F.2d 339, 353 (D.C. Cir. 1978).

In this case, the requested records are kept in electronic form, not in a paper-based form, and cannot be retrieved by MPD with the information provided by Appellant without unreasonable effort. We note that MPD has stated that it will conduct the search if it is provided the additional information which it requested.

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need to address this issue. DC FOIA provides no sanctions for failure to respond timely to a request. The consequence of a failure to respond timely, if one has occurred, is to enable a requester to exercise his or her appeal rights, as Appellant has done.

Conclusion

Therefore, we UPHOLD the decision of MPD. This appeal is hereby DISMISSED.

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 in the District of Columbia Superior Court.

Sincerely,

Donald S. Kaufman  
Deputy General Counsel

cc: Natasha Cenatus