

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

**Freedom of Information Act Appeal: 2011-09R**

March 3, 2011

Mr. Gregory A. Slate

Dear Mr. Slate:

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) (“DC FOIA”), dated January 6, 2011 (the “Appeal”). You (“Appellant”) assert that the University of the District of Columbia (“UDC”) improperly withheld records in response to your request for information dated December 17, 2010 under DC FOIA (the “FOIA Request”).

Background

Appellant’s FOIA Request, addressed initially to the Office of the Chief Technology Officer but transferred to UDC as it is in possession of the records in question, sought information from the universe of UDC emails as follows:

1. Any and all emails sent or received by any email address @udc.edu to or from any email address @policebuse.com.
2. Any and all emails sent or received by any email address @udc.edu to or from any email address @policebuse.org.
3. Any and all emails sent or received by any email address @udc.edu to or from any email address containing the name “kamau.”
4. Any and all emails sent or received by any email address @udc.edu to or from any email address containing the letters “pcc.”
5. Any and all emails sent or received by any email address @udc.edu containing the name “Greg Slate” in the subject or body of the message.
6. Any and all emails sent or received by any email address @udc.edu containing the url “GregSlate.tv” in the subject or body of the message.
7. Any and all emails sent or received the email address kmawakana@udc.edu from August 20, 2010 until December 17, 2010.
8. Any and all emails sent or received the email address sjefferson@udc.edu from August 20, 2010 until December 17, 2010.

By email dated January 5, 2010, UDC requested that Appellant narrow his request. However, Appellant declined to do so. By email dated January 6, 2010, UDC denied the request of

Appellant because the request was unreasonably broad and unduly burdensome, noting, among other things, that UDC had approximately 7,000 email accounts which would be the subject of the searches for the requested records.

On the same day, January 6, 2010, by email, Appellant initiated the Appeal. Appellant challenges the denial of the FOIA Request, stating the following reasons: (1) The requested records should have been already located and centralized in connection with an alleged UDC investigation; and (2) The computer search required is not labor intensive or time consuming.

In addition, on the same day, Appellant made seven separate FOIA requests, with subparts (the “Subsequent FOIA Requests”), to UDC for records. Each Subsequent FOIA Request was limited to a single email account and such request encompassed, for each email account, the records requested in the FOIA Request.

UDC responded to the Appeal by reaffirming the position stated in its denial. In addition, UDC contended that the submission of Subsequent FOIA Requests caused the FOIA Request to be moot. Thereafter, UDC processed the Subsequent FOIA Requests and produced the records, subject to withholding of certain records which it believed to be exempt from disclosure under DC FOIA.

Based on the documents received by this office, it appeared that the Subsequent FOIA Requests were a modification of the FOIA Request and that UDC was proceeding with the revised request. On February 15, 2011, by email, this office asked the Appellant to confirm whether or not this was the case. On February 22, 2011, we had not received a reply and issued a decision believing that Appellant had withdrawn the objection. On the same day, when Appellant notified us that the original request had not been modified, we withdrew the decision and gave UDC an opportunity to clarify and supplement its response. UDC reaffirmed its prior position, provided information about the time required for the searches, and provided information regarding the status of the Subsequent FOIA Requests.

### 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).

An agency is not required to conduct a search which is unreasonably burdensome. *Goland v. CIA*, 607 F.2d 339, 353 (D.C. Cir. 1978); *American Federation of Government Employees, Local 2782 v. U.S. Dep't of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990). In this case, Appellant has requested that UDC search the entire universe of its email accounts for certain matching accounts. According to UDC, it has approximately 7,000 current email accounts. Except for two of the eight parts, the request, on its face, does not specify a time period, so the search requested would include inactive accounts which are archived. The open-ended nature of the request, not limited by time or other limiting parameters, would appear to be unreasonably burdensome on its face. However, we do not need to premise a conclusion on this basis. According to UDC, its Chief Technology Officer estimated that the requested search for each email account would take 45 minutes. Based on the number of accounts to be searched, this would be unreasonably burdensome.

UDC did not rest on the denial of the request. In accordance with DCMR § 1-402.5, it contacted Appellant to attempt to narrow the scope of the request so that a search could proceed. As set forth above, Appellant responded with seven revised requests. There was some ambiguity as to whether this was a modification of the prior request or a new request, which ambiguity led to the issuance of our prior decision which was withdrawn. However, the submission of the new, revised requests, i.e., the Subsequent FOIA Requests, seems to be an acknowledgment that the FOIA Request was too broad and burdensome. Moreover, as set forth by UDC, UDC produced the documents pursuant to the Subsequent FOIA Requests. The Subsequent FOIA Requests were formulated to include the information sought in the FOIA Request with respect to seven specified accounts, including ones named in the seventh and eighth items of the FOIA Request. Thus, to the extent that the seventh and eighth requests were arguably narrower than the first six items, the records furnished with respect to the Subsequent FOIA Requests appear to have reasonably produced the information sought in the FOIA Request. FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Under the totality of the circumstances, we believe that occurred here. Ordering a supplemental search would be unreasonably cumulative or duplicative.

Appellant contends that the requested records should have been already located and centralized in connection with an alleged UDC investigation. However, agencies are only required to search for records in the manner in which they are maintained. *See Goland v. CIA*, 607 F.2d 339, 353 (D.C. Cir. 1978). DC FOIA provides no warrant to second-guess the management practices of an agency in the compilation and maintenance of its records.

### Conclusion

Therefore, we uphold the decision of UDC. This appeal is hereby DISMISSED.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under 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: Terry Carmichael Jackson, Esq.