

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

Freedom of Information Act Appeal: 2011-22

April 28, 2011

Mr. Ronald Bonafilio

Dear Mr. Bonafilio:

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 April 18, 2011 (the “Appeal”). You (“Appellant”) assert that the Office of the Chief Financial Officer (“OCFO”) improperly withheld records in response to your undated request for information under DC FOIA (the “FOIA Request”).

Background

Appellant’s FOIA Request sought a computer run for District Department of Transportation infrastructure contracts from Fiscal Year 2001 to the present with the following information:

1. Contract number;
2. Date of award;
3. Vendor receiving the award;
4. Description of contract/title;
5. If federal funds were used in the contract.

In response, OCFO stated that it did not have the documents requested.

On Appeal, Appellant challenges the denial of the FOIA Request. First, Appellant states that, prior to the submission of the FOIA Request, he discussed the request with the agency FOIA officer, Laverne Lee, and an unnamed agency attorney and that they told him that the “data was available and could be retrieved easily from a database . . .” Second, Appellant states that an agency official from the Office of Contracting and Procurement, not named, confirmed that this information was available from the OCFO. Third, Appellant states that the requested documents

comprise fundamental information that is used or should be used by a financial officer to monitor and manage government funds and that “several sources,” not named, stated that this information is available.

In its response, dated April 25, 2011, OCFO reaffirmed its position. It stated that the request was for contract documents, which are in the possession of the Office of Contracting and Procurement and the District Department of Transportation.

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).

OCFO construes the FOIA Request as a request for contract documents, that is, District Department of Transportation infrastructure contract documents. We do not agree with that construction. Appellant’s request was for information regarding Department of Transportation infrastructure contracts (“on a computer run for District Department of Transportation infrastructure contracts from Fiscal Year 2001 to the present the following information . . .,” not for the contracts themselves. Accordingly, we order OCFO to conduct a search for records containing the information requested by Appellant. As we believe that the original response of OCFO was made in good faith, the response pursuant to this order shall be made within time period specified in D.C. Official Code § 2-532(c) and (d). Appellant may challenge the revised response of OCFO in accordance with D.C. Official Code § 2-537.

This decision only requires that OCFO conduct an adequate and reasonable search. Until such search is conducted, we will not know whether or not there are records which are to be disclosed. The fact that an official of another agency, named or unnamed, expresses an opinion that such records exist, or that an official of the agency offers such opinion prior to making a search, is not sufficient to make a finding that responsive records exist. Moreover, while Appellant may feel that OCFO should maintain the requested records in the form which he specified, DC FOIA provides no warrant to second-guess the management practices of an agency in the compilation and maintenance of its records if none exist. 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). As stated above, after OCFO has made a search and responded to Appellant, Appellant may challenge the response if dissatisfied.

Conclusion

Therefore, we REMAND this matter to OCFO for disposition in accordance with this decision.

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: Charles Barbera, Esq.
Laverne Lee