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

Freedom of Information Act Appeal: 2011-23

May 9, 2011

Mr. Vincent Vane

Dear Mr. Vane:

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 March 1, 2011, and received April 22, 2011 (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 December 15, 2010 (the "FOIA Request").

Background

Appellant's FOIA Request sought "any and all files and records which you have pertaining to me." This statement was followed by a series of anecdotes, questions, and complaints relating to a file from a Maryland law firm about an alleged false arrest, an alleged contact with an MPD officer, and the development of three group homes in the District. Appellant also sent a letter, dated January 10, 2011, to MPD, in response to an MPD letter, dated January 6, 2011 (the MPD letter was not made part of the record), providing additional details regarding his contact with the MPD officer as well as mentioning the alleged false arrest.

MPD interpreted the FOIA Request to be for any information or documents regarding his status as a "special employee" of MPD. In response, by letter dated February 1, 2011, MPD stated that it had no documents or information.

Appellant filed the Appeal, contending that he never represented that he was a special employee or confidential informant and that MPD did have some documents, including those relating to an arrest. He reiterated some of the anecdotes, questions, and complaints from the original FOIA Request.

By email dated May 2, 2011, MPD filed its response to the Appeal, stating as follows. After receipt of the Appeal, MPD made another search and located a document relating to the arrest. In addition, MPD contacted Appellant and advised him of the subsequent search. MPD stated that Appellant indicated that he was satisfied with the results of the search as supplemented.

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).

Subsection 1-402.4 of the District of Columbia Municipal Regulations provides: "A request shall reasonably describe the desired record(s)." A requester must frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome and to enable the agency to determine precisely what records are being requested. *Assassination Archives & Research Center, Inc. v. CIA*, 720 F. Supp. 217, 219 (D.D.C. 1989). "The rationale for this rule is that FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters. Therefore, agencies are not required to maintain their records or perform searches which are not compatible with their own document retrieval systems." *Id*.

As under federal law, an agency is required to disclose records available only upon a request which reasonably describes the records sought. *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990); *Marks v. United States (Dep't of Justice)*, 578 F.2d 261, 263 (9th Cir. 1978). A description is sufficient if it enables a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort. *Id*.

FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Under the law, an agency "has no duty either to answer questions unrelated to document requests or to create documents." *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985). The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

As stated, Appellant's FOIA Request sought "any and all files and records which you have pertaining to me." In *Fonda v. CIA*, 434 F. Supp. 498 (D.D.C. 1977), plaintiff requested all records "filed under my name or obtainable by the CIA by searching through files and materials for documents which contain my name." *Id*. at 501. Such request was found to be open-ended,

without any limiting criteria, and was held not to reasonably describe the records sought. The FOIA Request was a similarly broad request, although followed by a confusing series of anecdotes, questions, complaints, and even accusations. It appears that, in accordance with DCMR § 1-402.5, MPD contacted Appellant to attempt to narrow the scope of the request so that a search could proceed. The response by Appellant discussed in the main a contact with an MPD officer made through Appellant's "associate in the DEA" and the aftermath of that contact. MPD made the inference that Appellant was describing his relationship with MPD as an informant or "special employee." When it received the Appeal, MPD inferred that Appellant was also interested in his arrest records and supplemented its search. Moreover, MPD contacted Appellant and advised him of the results of the new search, apparently to determine whether it had correctly assessed the nature of the records requested. We believe that MPD made a reasonable interpretation of what was presented to it and acted accordingly.

As stated, a request under DC FOIA must reasonably describe the records, that is, with sufficient particularity, to enable an agency to locate them, if they exist, without being required to scour all of its records and expend an unreasonable amount of time. Under the circumstances appearing on the administrative record, the agency made a reasonably search on what was presented to it and has produced (or will produce, as indicated in its response to the Appeal) the responsive records in accordance with the FOIA Request. We note that MPD did not reject the request out of hand, but twice attempted to clarify the scope of the search.

The Appeal is also reminiscent of the case of *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978). In *Marks*, the requester, like Appellant, asked for all files and documents maintained under his name and was unwilling to believe that, after being given four pages of documents, that full disclosure had been made. He based it on the alleged facts that "he had been employed by the government in a 'sensitive' position and because he was the subject of an unsolicited report to the FBI by a private citizen," *Id*. at 264, and his belief that files are maintained on such persons. The Court quoted the lower court:

> But plaintiff has failed to submit any evidence that reports on such individuals are always or even routinely prepared in writing by the FBI. The mere fact that a portion of the record system is devoted to such reports cannot support any inference to that effect. Even if reports are prepared, there is no evidence as to how long they are preserved or in what department of the government they are kept.

Id. Appellant has essentially set forth the same argument as the plaintiff in *Marks*. Like the Court in *Marks*, we are satisfied that MPD has satisfied its statutory obligation.

We also note that the FOIA Request made reference to inspections of properties which Appellant was developing for group homes. It is likely that MPD would produce no records relating to these properties because it does not do such inspections. A proper request under DC FOIA must be made to the agency which maintains the records.

Finally, we note again that MPD stated that Appellant indicated that he was satisfied with the results of the search as supplemented. As Appellant indicated that he still wanted to prosecute the Appeal, it suggests that he may believe that this office will make an independent search.

However, the function of this office is to ensure that the agencies comply with their obligations under DC FOIA, not to undertake such independent search. We find that MPD has so complied.

Conclusion

Therefore, we uphold the decision of MPD. The 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: Natasha Cenatus
Ronald B. Harris, Esq.