

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

Freedom of Information Act Appeal: 2011-25

May 23, 2011

Charles A. Camilier, Esq.

Dear Mr. Camilier:

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 22, 2011 (the “Appeal”). You (“Appellant”) assert that the Office of the Chief Financial Officer (“OCFO”) improperly withheld records in response to your request for information under DC FOIA dated February 24, 2011 (the “FOIA Request”).

Background

Appellant’s FOIA Request sought information regarding the “Cap Rate Study” prepared by Delta Associates for the Office of Tax and Revenue, an agency under the OCFO.

In response, by letter dated March 25, 2011, OCFO produced the “available” documents requested. These constituted some, but not all, of the documents requested.

On Appeal, Appellant challenges the production of documents by OCFO as constituting a denial of the FOIA Request. Appellant states that “a considerable number of records were not produced. . . . Upon information and belief, documents responsive to theses [sic] do exist”

In its response, by email dated May 19, 2011, OCFO indicated that it had supplemented its search and provided additional documents to Appellant, copies of which documents were attached. It also affirmed that it had examined all relevant electronic databases and paper-based files where the requested records were likely to be located and that it had produced all responsive records maintained by the agency.

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).

In this case, upon review of the Appeal and the original request and response, OCFO supplemented its search and was able to locate additional documents, which were provided to Appellant. Usually, we would consider the matter to be moot and dismiss the case without further discussion. However, Appellant indicated that he believed that there were “considerable” additional documents. It may be, then, that Appellant still does not consider the matter to be moot as the supplemental production may have fallen short of his expectations. Accordingly, in the interest of administrative efficiency, to obviate the need for any request for reconsideration or a new appeal, we will address the sufficiency of the response, as revised.

DC 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). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978). In this case, OCFO identified all the likely repositories of the requested records, conducted a search accordingly, and produced all the responsive records. This satisfies the requirements of DC FOIA.

Conclusion

Therefore, we uphold the decision, as revised, of OCFO. The 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: Charles Barbera, Esq.
Laverne Lee