

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

Freedom of Information Act Appeal: 2011-27

May 26, 2011

Mr. Christopher Wade

Dear Mr. Wade:

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 May 9, 2011 (the “Appeal”). You (“Appellant”) assert that Metropolitan Police Department (“MPD”) improperly withheld records in response to your request for information under DC FOIA dated April 26, 2011 (the “FOIA Request”).

Background

Appellant’s FOIA Request sought the final signed report for the threat assessment investigation conducted regarding Appellant and all emails and other documents relating to the investigation.

In response, by letter dated May 4, 2011, MPD denied the FOIA Request on the grounds that the threat assessment was intelligence material which would reveal investigative techniques not generally known to the public and which was exempt from disclosure under D.C. Official Code § 2-534(a)(3)(E). It notes that Appellant was notified in person by a named officer about the threat assessment investigation, including the results.

On Appeal, Appellant challenges the denial of his FOIA Request for the following reasons:

1. Appellant was never notified about the threat assessment investigation by the named officer.
2. Appellant was provided with an unsigned copy of the report for the threat assessment investigation and that he should be given a signed copy of the report.
3. Appellant is a law enforcement officer employed by MPD, is aware of MPD investigative techniques, and should not be treated as a member of the general public.
4. MPD can and should provide redacted records in lieu of denial of the entire FOIA Request.

In its response, by email dated May 20, 2011, and supplemented by email dated May 23, 2011, MPD stated that, upon review of the Appeal and the original request and response, it is releasing a final signed copy of the report for the threat assessment investigation. In addition, it stated that there are no emails or other documents relating to the threat assessment investigation conducted regarding Appellant.

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, MPD reconsidered its position and is releasing the final signed report regarding the threat assessment investigation. Accordingly, the issue as to the final report is moot and the only issue which remains is the production of emails and other documents relating to the investigation.

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, MPD has made an electronic search with respect to emails and searched for other documents and has found no other responsive records. We are satisfied that MPD made a good-faith search.

Conclusion

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