

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

Freedom of Information Act Appeal: 2011-28

June 10, 2011

Mr. Charles Wilson

Dear Mr. Wilson:

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 10, 2011 (the “Appeal”). You (“Appellant”) assert that the Office of Unified Communications (“OUC”) improperly withheld records in response to your request for information under DC FOIA dated March 31, 2011 (the “FOIA Request”).

Background

Appellant’s FOIA Request sought copies of a complaint or report, including the audio or transcript of a 911 call, made on March 26, 2011 alleged by Appellant to be made by a resident on the street where the Appellant lives stating that Appellant was taking pictures of motor vehicle identification tags.

In response, by letter dated April 27, 2011, OUC stated that, after a reasonable search, it could not find any records described by Appellant.

On Appeal, Appellant challenges the denial of the FOIA Request. Appellant states that his request is “what prompted MPDC to ask for and question me at my home on the above date, approximate time and location [March 26, 2011, 5:00-6:00 PM, and 1800 block of Morris Road, S.E.].”

In its response, by email dated May 20, 2011, and supplemented May 23, 2011, OUC reaffirmed its position. It stated that it made two separate searches and was unable to locate any telephone calls as described in the FOIA Request.

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).

DC 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).

In this case, OUC made not one, but two, separate searches and was unable to locate the requested records. We have no reason to doubt the veracity of this representation and it is dispositive of the matter. We are satisfied that MPD made a good-faith search.

Conclusion

Therefore, we uphold the decision of OUC. 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.