

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

Freedom of Information Act Appeal: 2011-31

June 28, 2011

Mr. Ronald Lewis

Dear Mr. Lewis:

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 18, 2011 (the “Appeal”). You (“Appellant”) assert that the Department of Human Resources (“DCHR”) improperly withheld records in response to your two requests for information under DC FOIA dated March 18, 2011 and March 22, 2011 (the “First FOIA Request,” the “Second FOIA Request,” and, collectively, the “FOIA Requests”).

Background

Appellant’s First FOIA Request sought the “names of all DC Government Personnel currently employed with the District Government as of March 18th,” such information to consist of current job title and identification number, date of hire, grade and step, date of opening and closing of the job vacancies (presumably vacancy announcements), job vacancy announcements, and job descriptions.

Appellant’s Second FOIA Request sought the “most current listing of D.C. Government Employees,” including “dates of hire, grades, agency, etc.”¹

In response to the First FOIA Request, by letter dated May 11, 2011, DCHR provided to Appellant a record, encompassing 603 pages, listing all District government employees, their respective position titles, date of hire, and grade and step. However, DCHR denied the request as to the remaining categories on the ground that it would be unduly burdensome. DCHR stated that there are over 30,000 District government employees and that DCHR would be required, for each position, to search all vacancy announcements maintained with respect to those positions,

¹ The contents of each of the FOIA Requests have been gleaned from the response letters of DCHR. The procedural rules for appeals state that an appellant must provide a copy of the original request. As the Appeal was accepted without this information, we notified Appellant several times that it was missing, but Appellant failed to provide such original requests.

and to determine the opening and closing vacancy dates for such positions. It also indicated that some of the requested information is not maintained by the agency.

In response to the Second FOIA Request, by letter dated March 30, 2011, DCHR stated that it was denying the request as the information was publically available and provided a link to the website and page where the information requested was available.

On Appeal, Appellant challenges the failure of DCHR to provide all of the records requested. Appellant states that the District government “maintains its personnel data in the internal computer system called PeopleSoft eRecruit[.] This system contains an enormous amount of data on each and every employee and with a flick of the switch it can generate the majority of information I am requesting, by just writing reports.” Appellant also states that job announcements are maintained on District government website and available to employees on an internal drive. Appellant maintains that “PeopleSoft should have no difficulty in generating personnel information, particularly who their last career employees are and their sex, age and race.”

In its response, dated June 2, 2011, which response included its legal argument, affidavits of District government employees, and other exhibits, DCHR reaffirmed and amplified its position.

As to the First FOIA Request, DCHR stated that it had provided Appellant with the name of each District government employee and his or her respective position, grade step, and date of hire. However, as to the remaining categories of information, relating to vacancy announcements and opening and closing dates of job vacancy announcements and job descriptions therein, DCHR states that either this information is no longer maintained by DCHR or it would constitute an unreasonable burden to obtain such information. Contrary to the assertion by Appellant that this information is maintained in the computer program PeopleSoft eRecruit, the eRecruit software is no longer utilized. It states that the District does maintain approximately 1031 vacancy announcements. However, printing the vacancy announcements requires a “job opening identification number,” so that these vacancy announcements must be printed one at a time. As vacancy announcements may be modified, cancelled, or reissued, or not utilized to fill a position, the vacancy announcements may not correspond to a current position and each agency must be contacted to ascertain whether the position was filled and who filled it. In addition, DCHR does maintain Merit Staffing case files for competitive hiring. These files are only maintained for two years following the selection of a candidate or the cancellation of a vacancy. DCHR asserts that a substantial number of personnel hours would be required to examine and copy the vacancy announcements and determine who may or may not have been hired pursuant to a vacancy announcement.

As to the Second FOIA Request, DCHR stated that it was denying the request as the information was made publically available as required by law and provided a link to the website and page where the information requested was available.²

² DCHR also stated its position with respect to another FOIA request made by Appellant. However, Appellant did not file an appeal with regard to this 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).

The First FOIA Request

DCHR has provided Appellant with the name of each District government employee and his or her respective position, grade step, and date of hire. Therefore, the only issue is the denial as to the remaining categories of information, relating to vacancy announcements and opening and closing dates of job vacancy announcements and job descriptions therein.

As DCHR correctly asserts, an agency is not required to conduct a search which is unreasonably burdensome. *Goland v. CIA*, 607 F.2d 339, 353 (D.C. Cir. 1978); *American Federation of Government Employees, Local 2782 v. U.S. Dep’t of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990). In this case, DCHR states that, to the extent that this information exists, it would require a substantial amount of time to compile the records requested. There are approximately 1031 vacancy announcements, plus Merit Staffing case files, which must be examined and researched seriatim. In Freedom of Information Act Appeal 2011-09, it was estimated that 45 minutes would be required to search over 7,000 email accounts, plus archived accounts, an unreasonably burdensome request. Although DCHR has not provided an estimate for the time necessary to search each of the files, it would appear that the same or more time for each file would be required. Therefore, the requested search would be unreasonably burdensome. The decision of DCHR is upheld.

The Second FOIA Request

DCHR stated that it was denying the Second FOIA Request as the information was made publically available as required by law and provided a link to the website and page where the information requested was available.

It has been held that an agency was not obligated under FOIA to produce records when the information is publically accessible via its website or the Federal Register. *Antonelli v. Fed. Bureau of Prisons*, 591 F. Supp. 2d 15, 25 (D.D.C. 2008). See also *Crews v. Commissioner*, 85 A.F.T.R.2d 2169, 2000 U.S. Dist. LEXIS 21077 (C.D. Cal. 2000)(production satisfied for documents that are publicly available either in the agency's reading room or on the Internet). Here, DCHR has posted the records online and provided the information necessary to allow Appellant to access the requested records. The decision of DCHR is upheld.

Conclusion

Therefore, the decision of DCHR is upheld. The Appeal is hereby DISMISSED.

This constitutes the final decision of this office. 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: Erica Taylor McKinley, Esq.