

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

Freedom of Information Act Appeal: 2011-43

July 5, 2011

Mr. Richard W. Boger, Sr.

Dear Mr. Boger:

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 30, 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 January 31, 2011 (the “FOIA Request”).

Background

Appellant’s FOIA Request sought the records prepared by MPD Sergeant Henry Daley of the homicide division. Appellant had turned himself into MPD based on an alleged homicide.

MPD sent four separate responses to Appellant. By letter dated February 11, 2011, the MPD FOIA Officer stated that MPD had conducted a search and found no records. By letter dated February 22, 2011, the MPD FOIA Officer supplemented the response by furnishing to Appellant a form PD-163 and confirming that MPD had no other information in its files regarding Appellant. On March 15, 2011, a captain in the Police Business Services Division of MPD further supplemented the response, stating that MPD created an arrest report, the Form PD-163, based on an outstanding warrant in Maryland and, because Appellant was arrested and detained on a “fugitive from justice” charge, “a holding charge only,” MPD did not create a case file. On March 21, 2011, the MPD FOIA Officer confirmed that it had no records regarding an interview conducted by Sergeant Daley or any other records other than the form PD-163 which was furnished.

Appellant filed the Appeal, contesting the denial of the FOIA Request for records “associated with a full-scale homicide investigation.” Appellant contends that records were created, based on the fact that he was interviewed by Sergeant Daley and his belief that the detective gathered evidence, including witness statements. Appellant also provides notes and an affidavit from his attorney and a portion of a court transcript as circumstantial evidence supporting his claim.

In its response, by email dated June 29, 2011, MPD reaffirmed its position. MPD stated that it had conducted four separate searches and had not found any records.

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, 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 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).

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). 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 states that it has made four separate searches and has found no responsive records. MPD did provide to Appellant the only document which it had maintained with respect to Appellant although it was not within the scope of the FOIA Request. The letter, dated March 15, 2011, from the captain in the Police Business Services Division of MPD, explains adequately why the records believed by Appellant to exist were not created. While Appellant may feel that MPD should have created and maintained the requested records, DC FOIA provides no warrant to second-guess the management practices of an agency in the compilation and maintenance of its records. We are satisfied that MPD has made a good-faith search and satisfied its statutory obligation.

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.