

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

**Freedom of Information Act Appeal: 2011-59**

August 29, 2011

Ms. Kelly P. Dalton

Dear Ms. Dalton:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) (“DC FOIA”), dated July 26, 2011 (the “Appeal”). You (“Appellant”) assert that the Department of Corrections (“DOC”) improperly withheld records in response to your request for information under DC FOIA dated July 4, 2011 (the “FOIA Request”).

Background

Appellant’s FOIA Request sought from DOC records relating to an alleged sexual assault on Appellant which occurred in 2006 while Appellant was in the custody of DOC. In response, by letter dated July 21, 2011, DOC stated that it conducted a search of all records pertaining to an assault and did not find any responsive records.

On Appeal, Appellant challenges the response to the FOIA Request based on the events that Appellant describes surrounding the assault. As described, Appellant reported the incident to an investigator at the Correctional Treatment Facility, Appellant was transported to Howard University Hospital for treatment, and MPD was notified and met with Appellant at Howard University Hospital.

In response, by letter dated August 26, 2011, DOC reaffirmed its prior position. It states that it conducted a search of the records at the Correctional Treatment Facility, but the search still did not produce any responsive records. However, DOC indicated that while the search still did not produce any responsive records for the name Dalton, it has subsequently identified a possible pseudonym, Kelly Priestly, as a possible alternate name by which Appellant has been identified. It states that an additional search was made using the pseudonym, responsive records were found, and that such records are being made available to 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 § 2-531(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). 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). “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

The administrative record indicates that DOC has conducted, in good faith, a search for responsive records where the records would likely be found, but no such records have been located. We believe that DOC has made a reasonable and adequate search which complies with DC FOIA. Nevertheless, although it was beyond the scope of the FOIA Request as Appellant only furnished one name, as indicated above, DOC uncovered a possible pseudonym which was not furnished as part of the FOIA Request and located responsive records for such pseudonym. DOC will be furnishing these records to Appellant. Based on the administrative record, especially considering this revised response, there is nothing further that DOC can be ordered to do.

## Conclusion

Therefore, we uphold the decision, as revised, of DOC. 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: Karen Devalera