

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

Freedom of Information Act Appeal: 2011-66

October 7, 2011

Mr. Joseph A. Davis, II

Dear Mr. Davis:

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 October 2, 2011 (the “Appeal”). You (“Appellant”) assert that the Office of the State Superintendent of Education (“OSSE”) improperly withheld records in response to your request for information under DC FOIA dated September 5, 2011 (the “FOIA Request”) by failing to respond to the FOIA Request.

Appellant’s FOIA Request sought emails from Ms. Mabel Kennedy regarding Youth Engaged for Success, Inc. for the period October 1, 2010 to September 5, 2011. In response, by email dated June 21, 2011, OSSE notified Appellant that it was extending its period for response for 10 business days pursuant to D.C. Official Code § 2-537(d). Appellant filed the Appeal on the ground that it has not received a response. By email dated October 5, 2011, OSSE stated that it had extended the response period for the FOIA Request and that it was awaiting completion of the requested search by the Office of the Chief Technology Officer (“OCTO”), the agency which processes email searches under DC FOIA. Furthermore, OSSE has been told by OCTO that one of its two servers needed to complete the process is currently “down” and, while OCTO has not provided an anticipated repair date, it will expedite completion of the search when the server becomes operable.

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. 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).

D.C. Official Code § 2-532(c) provides that an agency shall have 15 business days to respond to a request. D.C. Official Code § 2-532(d) provides for an extension of 10 business days to respond to a request. In this case, the extension was exercised. Accordingly, the time to respond to the FOIA Request was extended until October 11, 2011. Consequently, the filing of the Appeal was untimely and remains untimely as of the date of this decision. Accordingly, the Appeal is dismissed, without prejudice to challenge the response of OSSE when made.

Moreover, even if the filing was timely, there is little relief that we can currently offer. The most that we can do is to order OSSE to complete the search that it has already initiated and is awaiting for OCTO to complete and to provide any responsive records. However, pursuant to its response, this is already the case.

Nevertheless, based upon our review of other pending appeals filed by Appellant, we advise OSSE to check the form of the search request which it has made to OCTO or the form of the search which OCTO has designed in accordance with the FOIA Request. In the searches performed in Freedom of Information Act Appeals 2011-67 and 2011-71, when OCTO performed its search pursuant to the FOIA requests, it searched for emails to or from jdavis@youthengaged.org rather than jdavisii@youthengaged.org. This appears to be the reason why there were no responsive records located in such searches and it seems that the same omission may cause a problem in the search in this matter.

Conclusion

Therefore, the Appeal is hereby dismissed, without prejudice to challenge the response of OSSE when made.

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: Tracey Langley