

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

Freedom of Information Act Appeal: 2012-28

February 21, 2012

Mr. Alan Colter

Dear Mr. Colter:

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 September 23, 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 June 23, 2010 (the “FOIA Request”).

Background

Appellant’s FOIA Request, made on his behalf by a private investigator, sought records regarding an assault which occurred on May 17, 2008 in Ward 1.

In response, by letter dated July 16, 2010, MPD provided 46 digital images and three pages of reports and, by letter dated July 20, 2010, an additional two pages.

On Appeal, Appellant asserts that MPD should have provided the “rough notes” from a witness named in an attached letter from Office of the United States Attorney.

In its response, by email dated February 21, 2012, while indicating that it was not clear what Appellant was appealing, MPD stated that it has provided three standard police forms, 46 photographs, and “all evidence reports in the file including firearms and forensic reports.” It also states that it has withheld only 6 pages of Washington Area Criminal Intelligence Information System reports. It asserts that these reports, which are internal records used for law enforcement investigative purposes only and document each step, procedure, and technique that MPD detectives took to investigate the case, are exempt pursuant to D.C. Official Code § 2-534(a)(3)(E) as they disclose investigative techniques that are not generally known to the public.

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).

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).

At the outset, we note that MPD indicated that it was unclear as to the nature of the Appeal and there is ample reason for its confusion. Appellant, who appears to be unschooled in procedure, filed the Appeal by submitting a series of documents with some handwritten notes on a few of those documents. However, on one of the documents, a letter from Office of the United States Attorney, he wrote that he “need[ed] the rough notes” from a named witness. Thus, we have construed the issue on Appeal to be the failure of MPD to provide those “rough notes.”

As indicated above, MPD states that it has provided, among other records, “all evidence reports in the file including firearms and forensic reports.” This indicates that MPD has made reasonable determination as to the location of records requested, that is, the file maintained regarding the incident, and has searched and produced the responsive records from that file. The only records which were withheld as exempt were formal reports which do not correspond to the “rough notes” identified by Appellant. As stated above, the test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. Here, the search was reasonable and adequate.

We note that the letter indicating that “rough notes” exist was written by an individual at the Office of the United States Attorney and was dated July 6, 2009. The FOIA Request was dated June 23, 2010, almost one year later, so it is possible that the records which Appellant seeks were

in the possession of the United States Attorney at the time of the FOIA Request and the search by MPD. This, we suspect, may explain the absence of the record in the MPD file.

Conclusion

Therefore, we uphold the decision of MPD. 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 Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.