

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

**Freedom of Information Act Appeal: 2012-29**

March 5, 2012

Ms. Abigail Padou

Dear Ms. Padou:

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 February 10, 2012 (the “Appeal”). You (“Appellant”) assert that the Office of the Chief Financial Officer (“OCFO”) improperly withheld records in response to your request for information under DC FOIA dated December 23, 2011 (the “FOIA Request”).

Background

Appellant’s FOIA Request sought records related to the following organizations, individuals, or legislation:

1. The Concerned Citizens of Carver Terrace and Langston Dwellings for Recreational and Educational Reform, for the period of October 1, 2005 to September 30, 2008.
2. William Myers, for the period of October 1, 2005 to September 30, 2008.
3. The Ward 5 anti-gang initiative, which was authorized in the D.C. Law 17-121 (the Fiscal Year 2008 Supplemental Appropriations Temporary Act Of 2008), for the period of October 1, 2007 to September 30, 2009.

In response, by email dated January 18, 2012, after requesting and obtaining a clarification of the FOIA Request from Appellant, OCFO stated that Appellant had submitted the same request to the Department of Parks and Recreation and that “OCFO and DPR will provide one response, as your duplicative requests will yield duplicative results.”

On Appeal, Appellant challenges the refusal of OCFO to conduct a search pursuant to the FOIA Request. Appellant provided a concise summary of its contention: “OCFO and DPR are different agencies that are custodians of different records. Therefore, OCFO must conduct a

search for records responsive to my request.” In addition, Appellant states that the FOIA Officer for the Department of Parks and Recreation told her that the Department of Parks and Recreation does not search any agency records other than its own when responding to a FOIA request and that its records are separate and distinct from the records of the OCFO.

In response, dated February 29, 2012, revised the reasoning for its position.

The OCFO independently manages and directs the financial operations of the District of Columbia government. All District of the Columbia budget, accounting and financial management personnel are employees of the OCFO. Therefore, the financial managers at the Department of Parks and Recreation are employees of the OCFO and any financial records they maintain for that agency are the records of the OCFO.

In this instance, the General Counsel’s office at the Department of Parks and Recreation responded to Ms. Padou’s requests by obtaining records from the financial managers at the Department of Parks and Recreation. The financial managers at the Department of Parks and Recreation are part of the OCFO, and therefore, our records have been searched.

### 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, 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.

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). 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 order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the

information requested.’ [Oglesby v. United States Dep’t of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

*Campbell v. United States DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1998).

It is fundamental under DC FOIA as well as the federal FOIA that a requester must direct its request for records to the agency which maintains the records. In this case, Appellant directed a separate request to each agency which Appellant believed would have responsive records and it maintains that “OCFO and DPR are different agencies that are custodians of different records.” Initially, OCFO stated that there would be one response as “duplicative requests will yield duplicative results.” On Appeal, it counters that the financial managers at the Department of Parks and Recreation are OCFO employees and any records which they maintain for the Department of Parks and Recreation are OCFO records. Therefore, as such managers assisted the Department of Parks and Recreation in its search, OCFO maintains that it has conducted a reasonable and adequate search.

OCFO is asserting that the records maintained at the Department of Parks and Recreation are its records. We note that the Department of Parks and Recreation does not believe so as it searched such records in response to the request of Appellant. Moreover, other agencies which utilize attorneys which are employees of the Office of the Attorney General treat records which such attorneys create as its records. Indeed, there could not be the duplicative results which Appellant claimed if there were in fact separate records. However, we need not dwell upon or decide this question for the purposes of the Appeal.

Whether or not the records maintained at the Department of Parks and Recreation are the records of OCFO or the Department of Parks and Recreation, these are not the only records which are maintained by OCFO. OCFO has not addressed on the administrative record the manner in which it maintains its records. Presumptively, OCFO maintains records at other locations which it controls and, on its face, the FOIA Request does not suggest that there would not be responsive records at such other locations. In order to establish that it has made a reasonable and adequate search, an agency must show that it has made a reasonable determination as to the location of records requested and has made, or caused to be made, searches for the records. See, e.g., Freedom of Information Act Appeal 2012-04 and Freedom of Information Act Appeal 2012-21. In this case, OCFO has not demonstrated that it has, in fact, made the appropriate determination as to the location of the responsive records and the corresponding search. Rather, it has simply relied upon the search of the records maintained by the Department of Parks and Recreation. It has not indicated that it considered whether or not the records which it maintains would have responsive records. As stated, the nature of the FOIA Request does not suggest that the responsive records would be confined to those maintained by the Department of Parks and Recreation. Moreover, the FOIA Officer for Department of Parks and Recreation has stated the records of OCFO and Department of Parks and Recreation are separate and that he has not searched the records of OCFO. Accordingly, we do not find that the search was reasonable and adequate.

Conclusion

Therefore, the decision of OCFO is reversed and remanded. OCFO shall conduct a search of its records for the responsive records and provide such records, subject to any applicable exemption, to Appellant.

This order shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of OCFO pursuant to this order.

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 Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman  
Deputy General Counsel

cc: Treva Saunders, Esq.  
Charles Barbera, Esq.