

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

Freedom of Information Act Appeal 2012-32

March 9, 2012

Mr. Marvin C. Little

Dear Mr. Little:

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 2, 2012 (the “Appeal”). You (“Appellant”) assert that the Metropolitan Police Department (“MPD”) improperly withheld records in response to your request for information under DC FOIA in January, 2011 and renewed February 24, 2011 (the “FOIA Request”).

Background

Appellant’s FOIA Request sought copies of the “original notes” made by a named MPD detective regarding a criminal incident.

In response, by letter dated February 4, 2011, MPD denied the FOIA Request, stating that it had previously provided to Appellant a copy of the notes and that Appellant was “not entitled to the original notes.” On February 24, 2011, Appellant renewed the FOIA Request in the form of an “appeal” to the MPD FOIA Officer. Appellant did not indicate that a response to the renewal was received.

On Appeal, Appellant contests the response of MPD as well as the disposition under the federal FOIA of a request to the United States Department of Justice, which latter request also included a request for a document which Appellant characterizes as an “immunity letter.”

In its response, by email dated March 9, 2012, MPD reaffirmed its position. MPD states that the named MPD detective searched his notes and a copy of the notes were provided to Appellant, which transmittal was acknowledged in writing by Appellant. Nevertheless, as an accommodation, MPD has proffered that it will request that another detective search his records for any notes which that detective may have taken on the date of the criminal incident.

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).

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).

In this case, MPD has made a reasonable determination as to the location of records requested, that is, the file maintained by the named detective regarding the incident, and has searched and produced the responsive records from that file. 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. It is unclear whether or not Appellant is seeking the “original” notes of the named detective or simply a copy of the original notes. In any event, a copy of the original notes is all that is required to be provided under DC FOIA and MPD has established to our satisfaction that it has provided such notes. Moreover, we note that MPD has gone beyond the requirements of DC FOIA and the scope of the Appeal and will be making a supplementary search by and through another MPD detective.

Insofar as the disposition under the federal FOIA of a request to the United States Department of Justice is concerned, we have no jurisdiction to consider the matter. As indicated in the documents attached to the Appeal, the appeal of the federal request is to be appealed to, and decided, by the Office of Information Policy of the United States Department of Justice.

Conclusion

Therefore, we uphold the decision of MPD. The Appeal is hereby dismissed.

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: Ronald B. Harris, Esq.