

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
Office of the General Counsel to the Mayor

March 20, 2012

BY U.S. MAIL

Mr. Charles E. Watts, Sr.
70 Clark Lane
Stafford, Virginia 22554-7703

Re: Freedom of Information Act Appeal 2012-34

Dear Mr. Watts:

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) (the “DC FOIA”), dated March 16, 2012 (the “Appeal”). You (“Appellant”) assert that the Office of Employee Appeals (“OEA”) improperly withheld records in response to your request for information under DC FOIA dated December 28, 2011 (the “FOIA Request”).

Background

Appellant’s FOIA Request sought documentation supporting, and answers to questions relating to, the decision of an administrative law judge. A central portion of the FOIA Request is excerpted as follows:

- 1). Where is there testimony that I had the assigned duty of “instruments examiner”. Additionally, please show proof that Charles E. Watts, Sr. was an instruments examiner whose assigned duty “was to ensure that all the official documents and records pertaining to each prisoner were in their file, and to note if there were any outstanding warrants or commitment orders that would preclude a prisoner from being released at the end of his or her sentence”.
- 2). Please show proof, or provide evidence, on which you base your conclusion that, “Employee also had to make certain that the prisoner’s release authorization form was properly filled out and signed before allowing a prisoner to be released.” In essence, what Record Office policy allowed you to draw the above conclusions that this writer was an instruments examiner who was responsible for fulfilling the above mentioned duties?
- 3). Since you, Judge [redacted], also stated on page two (2), paragraph three (3), under ‘Undisputed Facts’, that, “Employee, a Correctional Program Officer since February

1984, was assigned as supervisor in charge of the legal instruments examiners to address the longstanding erroneous release problem,” under the Freedom of Information Act, please provide information to support that statement. . . . please provide the established written policy that I allegedly violated as a CORRECTIONAL PROGRAM OFFICER on which you based your belief that I was guilty of Malfeasance. Where exactly does it say that Correctional Program Officer Charles E. Watts, Sr. had any responsibility for performing any work with regards to release of inmates? . . .

4). On page three (3), paragraph three (3) of your Initial Decision, you state, “A detainer would usually come in either by fax or mail. Under the established protocol, either Employee or the supervisor collects the incoming documents and hands it to the lead examiner to enter the information into the JACCS (jail and Community Corrections Systems) computer database system. The JAACS system gives the location of an inmate in the jail.” . . . Under the Freedom of Information Act, please provide information to substantiate the above as being true. . . .

please provide me with an explanation of why Legal Instruments Examiner, Mark SIBERT and his Lead Supervisor, Benjamin ELLIS, were cleared of any wrongdoing by you when it’s clear to all that they obviously were in violation of PROGRAM STATEMENT 4353.1A, which, if adhered to, no erroneous release would have occurred.

please produce evidence that support your allegation that this writer, seemingly by himself, failed to carry out an assigned duty that had previously caused premature releases and was also the cause of the erroneous release of inmate Khushal Khan.

I request that information be made available to justify persons being able to untruthfully make that incorrect statement about me, and it not having been a part of the official record. In essence, exactly where can it be found that written or verbal testimony was given by my managers (Correctional Program Administrator, Steve Smith, or from Leonna Bennett, Case Management Services) to justify the unproven, inappropriate, and wrongful allegation that my supervisors had lost confidence in my ability to adequately perform my job? . . .

I therefore request, under the Freedom of Information Act, that information be made available to support and justify the claim you elected to obviously accept from DCDC, and put forth as being the unproven truth in your OEA Initial Decision.

please provide detailed, verified, and undeniable information that proves beyond the shadow of a reasonable doubt which DC Jail Records Office Policy that this writer violated to cause the erroneous release of inmate Khushal Khan.

In response, by letter dated January 26, 2012, OEA provided a copy of the decision of the administrative law judge, but otherwise stated that there were no responsive records.

On Appeal, Appellant challenges the denial of the FOIA Request because “my FOIA requests have not been responded to as I have asked.”¹

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.

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).

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). Subsection 1-402.4 of the District of Columbia Municipal Regulations provides: “A request shall reasonably describe the desired record(s).”

“A FOIA request is not an opportunity to relitigate [a] case.” *Stuler v. United States DOJ*, 2004 U.S. Dist. LEXIS 9777 (W.D. Pa. 2004). DC FOIA provides a right to access of documents, not a right to challenge the correctness or reasoning of an agency decision, to interrogate an agency, to require an agency to conduct research, or otherwise to require answers to questions posed as FOIA requests. *See Department of Justice Guide to the Freedom of Information Act* (2009) at 51, n. 127 (collecting cases, reported and unreported).

The FOIA Request is an attempt by Appellant to dispute the administrative decision of OEA and require the agency to substantiate further the written decision which it issued. It is a lengthy, argumentative discourse interspersed with interrogatories, requiring not only answers to

¹ Although the agency is usually given an opportunity to file a response to an appeal, we have determined that an agency response is not necessary to decide the Appeal.

questions but responses necessitating legal and factual analysis. Quite simply, Appellant has not made a proper request under DC FOIA.

Conclusion

Therefore, we uphold the decision of OEA. 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: Sheila Barfield, Esq.