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

Freedom of Information Act Appeal: 2012-65

August 2, 2012

James A. Frost, Esq.

Dear Mr. Frost:

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 July 17, 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 dated April 13, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought "records compiled or received since August 1, 2001, by the Metropolitan Police Department referring to or related to the production and/or distribution of pornography" in zip code 20017, the neighborhood known as Brookland, and the land owned or leased by Catholic University.

In response, by letter dated May 1, 2012, MPD stated that it had "conducted an adequate search for the information you requested" and that "[t]he Human Trafficking Unit has not confiscated any pornography in the listed areas to include Catholic University."

On Appeal, Appellant challenges the response of MPD, contending that it refers only to information, not records, and states only that no pornography has been confiscated, but "doesn't state that no records have been 'compiled or received since August 1, 2001' . . ."

In response, by email dated August 2, 2012, MPD states that upon receipt of the Appeal, the FOIA office contacted, in addition to the Human Trafficking Unit, the Youth Investigations Division, which is responsible for any offenses involving children and pornography, and the Fifth Police District, which is responsible for investigating the pertinent offenses involving adults that are not investigated by the Human Trafficking Unit, to determine if responsive records could be located. MPD further states that officials from those offices have advised that, after searching their databases, no responsive records were located.

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).

The sole issue of the Appeal is the adequacy of the search by MPD.

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).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act

Appeal 2012-30. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency.

In this case, upon receipt of the Appeal, MPD redoubled its efforts to assure that a reasonable and adequate search in accordance with law was conducted. Based on its knowledge of its organizational structure and operations and the nature of the records requested, it caused the appropriate units or divisions to conduct a second search. MPD indicates that its "data bases" were searched. We infer that "data bases" refers to all types of files which the units or divisions maintain, that is, electronic databases and relevant paper-based files. Therefore, we find MPD made a reasonable determination as to the location of such records and made a search for the records in accordance with such determination. Accordingly, we find that the search was reasonable and adequate.

We do acknowledge that the initial response of MPD was ambiguous as to the manner in which the search was conducted. However, unlike Appellant, the respondent officer is not an attorney and cannot be expected to draft with the precision of an attorney.

Conclusion

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

This constitutes the final decision of this office. 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 Harris, Esq.
Kimberly Robinson