

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

Freedom of Information Act Appeal: 2012-67

August 13, 2012

Mr. Tracy Pinkney

Dear Mr. Pinkney:

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 11, 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 (the “FOIA Request”).

Background

Appellant’s FOIA Request sought “a copy of the log book of any information, request for interviews, and sign in” regarding a named individual to MPD in connection with the murder of another named individual and the prosecution of Appellant.

In response, by letter dated May 22, 2012, MPD stated that it was withholding the records based on exemptions for personal privacy under D.C. Official Code § 2-534(a)(2) and (3)(C).

On Appeal, Appellant challenges the denial of the FOIA Request on the ground that the named individual waived his personal privacy rights when he testified in the criminal trial of Appellant.

In its response, dated August 13, 2012, MPD modified its prior position. MPD states that upon receipt of the Appeal, it

conducted a search for the logbook and any responsive pages therein. Personnel in the department’s Criminal Investigations Division searched and located the homicide file related to the court case referenced in Mr. Pinkney’s appeal. Personnel also reviewed the homicide logbook and determined that there were no responsive documents in either the logbook or the homicide file.

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, the 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 the 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 may be examined to construe the local law.

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).

As we have stated in prior decisions, *see, e.g.*, Freedom of Information Act Appeal 2012-65, 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. Although MPD has not indicated the manner in which it determined where the requested records were located, as the requested records concerned a homicide, it seems reasonable that MPD would review its homicide log book. MPD states that it reviewed such log book and there were no responsive records. In addition, although the FOIA Request was limited to the log book, as the Appeal characterized the FOIA Request more broadly, MPD located and reviewed the homicide file and found that there were no responsive records. Accordingly, we find that MPD has made a

reasonable and adequate search and that no responsive records exist. Therefore, we find that there was no denial of the FOIA Request.

In light of our conclusion above, it is not necessary to consider the applicability of the exemptions for personal privacy under D.C. Official Code § 2-534(a)(2) and (3)(C).

Conclusion

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.