

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

**Freedom of Information Act Appeal: 2012-72**

August 23, 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 August 10, 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 July 14, 2012 (the “FOIA Request”) by failing to respond to the FOIA Request.

Background

Appellant’s FOIA Request sought from various designated units of MPD records regarding an incident which occurred at 1011 Irving Street, N.E., in February, 2011. A request by Appellant regarding the premises at 1011 Irving Street, N.E., was the subject of Freedom of Information Act Appeal 2012-64. The FOIA Request was lengthy, consisting, in the aggregate, of 15 parts and subparts and it would not be useful to set forth the entire request. However, the FOIA Request sought records which, among other things, “will or may:

Reveal: . . .

For any civilian who shot from a gun a bullet into the body of the late [alleged named victim] or into the body of the late [alleged named victim], whether he/she had as of February 13/14, 2011, a permit to possess and carry a regulated firearm which had been issued by a unit of government in the U.S.A. and which was at that time valid under applicable District of Columbia law; and

Disclose:

Whether on February 13/14, 2001, the premises at 1011 Irving Street, N.E., Washington, DC 20017 contained any contraband such as:

Prescription drugs which had not been lawfully prescribed for anyone who was then a resident of the house at 1011 Irving Street, Northeast DC, for someone else who was on

the premises when Metropolitan Police Department personnel arrived on February 13, 2011; . . .

Also Disclose:

Whether at the premises at 1011 Irving Street, Northeast DC, on February 13, 2011, Metropolitan Police Department personnel found: . . .

Equipment/devices with which films, videotapes, still photographs, and/or sound recordings could or might be made . . .

Although MPD acknowledged the FOIA Request, when a final response was not received, Appellant initiated the Appeal.

In response, by email dated August 17, 2012, MPD stated that it had responded to Appellant by letter dated August 1, 2012, denying the FOIA Request on the basis that an investigation was pending. In response to the Appeal, MPD states that “Mr. Frost has made an improper FOIA request in that he seeks information rather than documents. Mr. Frost has previously made a similar request for information which was found to be improper. *See MLC 2012-64.*” In addition, MPD states that there is an ongoing law enforcement proceeding with respect to the incident and release of the records in the investigatory files would interfere with such enforcement proceedings. Therefore, MPD asserts that the records in the case file are exempt from disclosure under D.C. Official Code § 2-534(a)(3)(A)(i) and (B).

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 FOIA Request is substantially similar in form and nature to the FOIA request in Freedom of Information Act Appeal 2012-64 and the conclusion, law, and reasoning in that case apply here. In Freedom of Information Act Appeal 2012-64, we stated:

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).”

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, although nominally stated as a request for records, is an attempt to require answers to inquiries and necessitates factual analysis rather than identification of responsive records. Quite simply, Appellant has not made a proper request under DC FOIA.

In light of this conclusion, it is not necessary to consider the argument of MPD regarding the applicability of the exemption under D.C. Official Code § 2-534(a)(3)(A)(i) and (B).

### 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 Harris, Esq.