

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-48**

March 24, 2015

VIA ELECTRONIC MAIL

Ms. Lisa Holden

RE: FOIA Appeal 2015-48

Dear Ms. Holden:

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 ("DC FOIA") dated March 7, 2015, which this office received on March 11, 2015. In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") improperly withheld records you requested under the DC FOIA.

Background

On January 20, 2015, you sent a request under the DC FOIA to the DCRA stating, "Abdullahi Barrow, P.E. (No. PE904867) is the professional engineer who provided structural engineering services related to 720 North Carolina Avenue in Washington, DC beginning on December 22, 2014. We would like any and all details about how he acquired his Professional Engineering License, the date that he acquired his Professional Engineering license, his educational details and any infractions and disciplinary proceedings that he may have been cited for."

DCRA responded to your request on March 3, 2015, stating that "a search of our records was conducted for documentation of any licensing documentation or any related records as requested. This search of our records revealed NO documents responsive to your request."

On appeal, you contend that based on DCRA's response, it appears that Abdullahi Barrow is not a licensed professional engineer in the District of Columbia as there appears to be no records on file pertaining to his licensing. You then ask for confirmation of whether Mr. Barrow was a professional engineer licensed to conduct business in the District of Columbia on December 22, 2014.

DCRA responded to your appeal in correspondence to this office on today's date. DCRA's FOIA officer explained that in response to your initial request, he contacted the Office of Occupational and Professional Licensing ("OPLA"), a division of DCRA, to inquire whether OPLA had records of Mr. Barrow's application for professional license. OPLA responded that it did not have a copy of Mr. Barrow's application for licensure but it had a copy of Mr. Barrow's certification of licensure. OPLA further advised that no disciplinary actions had been taken

against Mr. Barrow's license. DCRA's FOIA officer informed this office that because your request did not ask for a copy of Mr. Barrow's license, he did not provide one to you.

Discussion

It is the public policy of the District of Columbia 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). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

Under the law, an agency "has no duty either to answer questions unrelated to document requests or to create documents." *Zemansky v. United States EPA*, 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, 129-30 (D.D.C. 2009). The request you submitted to DCRA consisted largely of questions (e.g., "We would like any and all details about how he acquired his Professional Engineering License"), and agencies are not required to respond to interrogatories under the DC FOIA. Nevertheless, in this instance we believe that DCRA should construe your interrogatories as a document request and produce Mr. Barrow's licensure of certification.

Conclusion

Based on the foregoing, we remand this matter to DCRA to provide you with a copy of Mr. Barrow's licensure of certification within five (5) business days of the date of this decision.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s/ Melissa C. Tucker

Melissa C. Tucker
Associate Director
Mayor's Office of Legal Counsel

cc: Maximilian L.S. Tondro, Assistant General Counsel, DCRA (via email)
Brandon Bass, FOIA Officer, DCRA (via email)