

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-75**

June 18, 2015

VIA ELECTRONIC MAIL

Mr. Jeremy Leval

RE: FOIA Appeal 2015-75

Dear Mr. Leval:

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”). In your appeal, you assert that the District Department of Transportation (“DDOT”) improperly withheld records you requested under the DC FOIA.

Background

On April 30, 2015, you submitted a request under the DC FOIA to DDOT seeking the Geographic Information System (“GIS”) purchase data from parking meters located in the District of Columbia. You requested that this data include:

(1) the purchase data from the parking meters located in Washington DC, including the initial times (the local time when someone purchases a space), locations (locations of the meters where the space is purchased) and durations (the length of time someone purchases the space for), (2) the locations of all physical payments stations for metered parking in Washington DC, (3) The location and number of spaces for all on-street parking zones including, (3)(a) all on-street parking permit zone locations in Washington, DC, (3)(b) all on-street parking metered zone location in Washington, DC, and (3)(c) all on-street parking free zone location in Washington DC.

On May 21, 2015, DDOT responded to you by providing a spreadsheet and a map, which DDOT asserts are responsive to parts (2), (3)(b), and (3)(a) of your request.

You subsequently appealed DDOT’s decision, arguing that data related to part (1) of your request exists in unmodified, raw digital form.

In a letter to this office dated June 16, 2015, DDOT responded to your appeal.¹ DDOT asserted that it conducted a thorough search for the requested data. In specific, DDOT “consulted with

¹ A copy of this response is attached hereto.

and queried the DDOT City Wide Parking Programs Division and the DDOT Chief Information Officer on the existence of the requested parking meter data . . . No data pertaining to this information is collected or utilized by this agency.”

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 . . .” D.C. Official Code § 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. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, and decisions construing the federal statute are instructive and may be examined to construe the local law. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987); *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this matter is the adequacy of the search with respect to part (1) of the GIS parking meter data. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Id.*

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).

Accordingly, to conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the location of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step 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 that the agency maintains. *Id.*

In this matter, DDOT searched its City Wide Parking Programs Division for the requested data. Additionally, DDOT questioned its Chief Information Officer on the existence of the requested

parking meter data. DDOT found no data related to part (1) of your request. Based on DDOT's representations, we conclude that its search was reasonable and we accept DDOT's position that it does not retain responsive documents.

Conclusion

Based on the foregoing, we affirm DDOT's decision and hereby dismiss your appeal.

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: Karen R. Calmeise, FOIA Officer, DDOT (via email)