

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-101**

September 22, 2016

Ms. Michelle Smith

RE: FOIA Appeal 2016-101

Dear Ms. Smith:

This letter responds to the administrative appeal you submitted 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 Department of Consumer and Regulatory Affairs (“DCRA”) improperly withheld records you requested under the DC FOIA.

On August 11, 2016, you submitted a request to DCRA for “the annual number of housing business licenses that [DCRA] received from 1998 to the present. How much money is received and how that money is used and distributed.”

DCRA responded to your request on September 6, 2016, stating that it does not maintain records of a list described in your request. DCRA’s further asserted that it is not obligated under DC FOIA to create new records or to answer questions.

By email dated September 7, 2016, you filed the instant appeal. DCRA responded to your appeal in a letter to this office dated September 21, 2016.¹ In its response, DCRA described the search it conducted and reiterated that no documents were retrieved. DCRA explained that within the agency, the Basic Business License (“BBL”) Division has the most knowledge about the types of records you are seeking. DCRA’s FOIA Officer requested a search for responsive documents from the BLL. The BBL conducted a search of its records and found no responsive documents. Further, DCRA’s response indicates that DCRA’s FOIA Officer consulted with the agency’s Information Technology department, which conducted an email search for records responsive to your request; however, this search also yielded no responsive documents.

This Office accepts DCRA’s representations that: (1) DCRA conducted a reasonable search for responsive records; and (2) the searches DCRA conducted yielded no records responsive to your request. As a result, DCRA conducted an adequate search and has not withheld any records from you; rather, it conducted searches and did not locate any.

Further, DCRA correctly asserted that it does not have to create documents to respond to your request, nor is it obligated under DC FOIA to answer interrogatories. 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 requires the

¹ A copy of DCRA’s response is enclosed with this letter.

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 consists largely of questions (i.e., “How much money is received and how that money is used and distributed[?]”), and agencies are not required to respond to interrogatories under the DC FOIA.

Conclusion

Based on the foregoing, we affirm DCRA’s response to your request 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.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Brandon Bass, FOIA Officer, DCRA (via email)