

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-72**

June 17, 2016

VIA REGULAR MAIL

Raoul Hughes

RE: FOIA Appeal 2016-72

Dear Mr. Hughes:

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 District of Columbia Department of Motor Vehicles ("DMV") did not adequately respond to your request for records under the DC FOIA.

Background

You submitted a request to the DMV for the history associated with a particular vehicle that was formerly registered in the District, "including new title and registration under this or any other title number issued after July '08 . . . and the voided Virginia title submitted in 2009, when registration was issued to a new owner . . ."

In response to your request, the DMV sent you three documents retrieved from its electronic database reflecting the title information and vehicle history associated with the vehicle you identified in your request.

Subsequently, you appealed to the Mayor contending that the vehicle history the DMV provided you is "incomplete and therefore unresponsive" to your request because it does not contain voided titles from the original registration in the District or an indication of when the title was transferred to a new owner. You further indicated that you know the information you are seeking exists because the vehicle is currently registered in another state to a different owner.

On June 9, 2016, the DMV provided this Office with a declaration in response to your appeal.¹ In its declaration, the DMV explained how the agency maintains vehicle records, how the searches at issue were conducted, and the results of the searches.

¹ A copy of DMV's declaration is attached.

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, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, 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 primary issue in this appeal is whether the DMV conducted an adequate search for the records at issue. 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. U.S. 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).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and 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.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Here, the DMV explained in a declaration submitted to this Office that motor vehicle records are maintained in a DMV database known as “Destiny” and are searchable by tag (license plate)

number, vehicle information number, and title number. If the same vehicle has been titled multiple times, this information appears in Destiny. When the DMV's FOIA officer searched Destiny based on the information you provided, he found that the agency had titled and registered the vehicle in 2008. He provided you with responsive documentation (with redaction made based on the personal privacy exemption under DC FOIA). The DMV's FOIA officer also conducted a search of the DMV's ticketing database because you requested information about traffic citations; however, no documents were retrieved. In an email to this Office, the DMV's FOIA officer noted, "I looked [in the DMV's database] and also had another person look. If a vehicle is re-titled in another jurisdiction after being titled in DC, DC would not receive that information." Under D.C. FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

We are satisfied based on the DMV's declaration that DMV identified the relevant locations for records responsive to your request and adequately searched them with the information you provided.

Conclusion

Based on the foregoing, we affirm DMV'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

cc: David M. Glasser, General Counsel, DMV (via email)