

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-79**

June 30, 2016

VIA EMAIL

Ms. Laila Miller

RE: FOIA Appeal 2016-79

Dear Ms. Miller:

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 appear to challenge the adequacy of the Metropolitan Police Department’s (“MPD”) response to your request for records under the DC FOIA.

Background

On April 22, 2016, you submitted a request to MPD for records related to surveillance and an investigation you believe the MPD is conducting of you. MPD granted your request in part and denied it in part. In specific, MPD provided you with some records that were responsive to your request¹ and redacted an additional 8 pages of email messages under the deliberative process privilege.

On appeal, you reassert your belief that you are “under surveillance 24/7 even inside my home.” MPD provided this Office with a response to your appeal on June 28, 2016.² In its response, MPD: (1) clarified its efforts to search for the records you requested; (2) reaffirmed that its searches were adequate; and (3) restated that it does not possess additional responsive records.

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).

¹ The responsive records are email conversations you initiated with various MPD employees; MPD found no responsive records pertaining to surveillance or an investigation.

² You requested and received a copy of MPD’s response in person on June 29, 2016.

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 MPD conducted an adequate search for the records you requested. 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).

In response to your appeal, MPD provided a description of the searches it conducted and affirmed that no responsive records were found. MPD identified the relevant locations for documents responsive to your request as: (1) email records; (2) MPD's electronic records system; and (3) records maintained by MPD's seven districts. MPD's response also affirmed that the relevant locations were searched with the identifying information you provided, and no responsive documents were located other than those identified in its response to you. Based on the description MPD provided in response to your appeal, we find that the search it conducted was adequate.

Conclusion

Based on the foregoing, we affirm MPD'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,

Mayor's Office of Legal Counsel
1350 Pennsylvania Avenue, N.W.
Suite 407
Washington, D.C 20004

cc: Ronald Harris, Deputy General Counsel, MPD (via email)