

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR**



**Mayor's Office of Legal Counsel**

July 27, 2017

Pamela Johnson

RE: FOIA Appeal 2017-107

Dear Ms. Johnson:

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's Department of Human Resources ("DCHR") failed to respond to your request for certain records.

Background

In April 2017, you submitted a request under the DC FOIA to DCHR seeking:

- 1) DC government's regulations, procedures and/or process (including agencies involved in the process) for generating to approval, from the Office the City Administrator, for the above listed position numbers;
- 2) Each approved Position Number's history in reference to type of appointment (term, regular or temp. etc); when created, amended, cancelled and/ re-issued;
- 3) The approved Job Requisitions associated with each Position Number;
- 4) If the initial job requisition with associated position number was cancelled, please provided [sic] the request from DCHR to cancel with justification and, include the new and approved job requisition with its position number that replaced the cancelled job requisition.
- 5) Name of DC government employees selected --date hired between 2014 thru 2017-- for each position number stated above.

On June 5, 2017, DCHR began responding to your request by providing a spreadsheet that contained information responsive to parts 2 and 5 of your request.

On July 13, 2017, you filed this appeal, asserting that DCHR failed to respond to parts 1, 2, and 3. Your appeal noted that you requested assistance from DCHR with parts 1, 2, and 4 of your request.

On July 21, 2017, DCHR provided you with a final decision letter granting your request. DCHR's final decision letter indicates that searches for parts of your request yielded no responsive documents.

On July 27, 2017, DCHR provided this Office with a response to your appeal.<sup>1</sup> In its response, DCHR explained its position in regards to each of the 5 parts of your request. For the first part of your request, DCHR indicated that it provided you with a document that is the agency's only memorialization regarding the process requested. For the second part of your request, DCHR indicated that it provided "the extent of the information that can be searched through PeopleSoft" – and that appointment type is not maintained in that file. For the third part of your request, DCHR indicated that position numbers are not matched to requisitions, and that they are housed in two separate databases – Peoplesoft and Jobsience. For the fourth part of your request, DCHR indicated, again, that because position numbers and requisition numbers are not linked in the same database, no responsive record exists that contains both of them. Lastly, for the fifth part of your request, DCHR reaffirmed that the June 5, 2017 transmitted spreadsheet fulfilled that part of the request.

### 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).

### *Part 1 – Adequacy of Search*

Part 1 of your request sought "DC government's regulations, procedures and/or process (including agencies involved in the process) for generating to approval, from the Office the City Administrator, for the above listed position numbers." Since DCHR asserts that it has not withheld any responsive records from you, the primary issues in this appeal are your belief that

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<sup>1</sup> A copy of DCHR's response is attached for your reference.

more records exist and your contention that DCHR conducted an inadequate search. 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: (1) make a reasonable determination as to the locations 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 includes determining 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, a DCHR attorney proffered that on July 27, 2017, she provided you with a recently drafted instruction. DCHR's attorney asserted that while the document is not squarely in line with your request, it represents the agency's only memorialization of the process that you specified. This Office accepts DCHR's representation, as the attorney who provided it is in a position to be familiar with the agency's "regulations, procedures and/or process (including agencies involved in the process) for generating to approval, from the Office the City Administrator . . ." Under applicable FOIA law, the test is not whether any additional documents might conceivably exist, but whether DCHR's search for responsive documents was adequate. *Weisberg*, 705 F.2d at 1351. Based on the letter DCHR provided this Office in response to your appeal, we find that DCHR conducted an adequate search for Part 1 of your request.

#### *Parts 2-5 -- Creating New Records*

The remaining 4 parts of your request seek information as opposed to records. A proper request under DC FOIA "shall reasonably describe the desired record(s)." 1 DCMR § 402.4. Parts 2-5 of your request do not reasonably describe a record, i.e. a document, memorandum, or

correspondence. To wit, your request states “I would like the following information . . .” By its own terms, your request does not describe records, but instead pieces of information that you would like to know, and which you believe exists in certain formats. DCHR is obligated under DC FOIA to search all record repositories likely to contain a responsive record; it has no obligation to create a new record or to answer interrogatories. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency “has no duty either to answer questions unrelated to document requests or to create documents.”). 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, 129-130 (D.D.C. 2009). DCHR was obligated here to identify responsive records existing at the time your request was made, and to provide them to you after reviewing them for applicable exemptions.

This Office’s jurisdiction is limited to the review of documents withheld by a District agency. D.C. Official Code § 2-537(a). Here, DCHR granted your request and is not withholding any responsive documents. In accordance with 1 DCMR § 402.5, DCHR made “every reasonable effort . . . to assist in the identification and location of requested records.” In specific, the agency conducted a query and generated a spreadsheet for you. It appears that you believe DCHR is not answering questions to your satisfaction or providing you with spreadsheets and information that you believe should exist. We have reviewed the agency’s responses, however, and conclude that it has met its statutory obligations under DC FOIA and provided you with all available, responsive records.

### Conclusion

Based on the foregoing, we affirm DCHR’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.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Leah Brown, Attorney-Advisor, DCHR (via email)