

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel

September 7, 2017

VIA ELECTRONIC MAIL

Grace Zhao

RE: FOIA Appeal 2017-142

Dear Ms. Zhao:

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 challenge the response you received from the Executive Office of the Mayor ("EOM") to your request for information relating to an outstanding balance owed to the District of Columbia government.

Background

Your submitted a FOIA request to the Mayor's Correspondence Unit ("MCU") relating to a debt that appeared on your credit report. You attached a copy of a portion of the credit report to your request. Your request asked the MCU to "provide details of the collection information (e.g. purpose, place or business, date, invoice /receipts with itemized break-out of the collection or charges)."

On July 31, 2017, the EOM's FOIA officer responded to your request on behalf of the MCU. In its response, EOM stated that "EOM does not maintain records of fines or fees that individuals owe to the District Government. As such, there are no EOM records that are responsive to your request."

On August 23, 2017, you filed this appeal. In your appeal you stated, "I haven't received the information I needed – **Why** I was charged." This Office notified EOM of your appeal, and EOM provided its response the same day. In its response, EOM reiterated that "EOM does not maintain records of fines or fees that individuals owe to the District Government. I confirmed this by consulting with employees of the Mayor's Office of the General Counsel . . . No documents concerning records or fines or fees that individuals owe from prior administrations were found."

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).

### *Adequacy of Search*

The primary issue raised in your appeal is whether EOM conducted an adequate search for the records at issue (records pertaining to a balance owed to the District). 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).

EOM’s response indicated that EOM does not normally maintain the types of records you requested. Regardless, EOM explained in its response to this Office that because the records you seek are from 2012, they predate the current administration, such that any responsive documents (if they existed) would be maintained in EOM’s Office of the General Counsel (“OGC”). EOM’s

response indicates that they searched OGC's records and that no responsive documents were located. This Office accepts EOM's representation that it "does not maintain records of fines or fees that individuals owe to the District Government." As a result, we find that EOM conducted an adequate search.

We note that if such records do exist, they would likely be maintained by the Central Collection Unit, which is a division of the District's Office of the Chief Financial Officer.

### Conclusion

Based on the foregoing, we affirm EOM decision and this appeal is hereby dismissed.

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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erika Satterlee, Associate Director, EOM (via email)