

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



Mayor's Office of Legal Counsel

September 21, 2017

VIA ELECTRONIC MAIL

Mr. William Matzelevich

RE: FOIA Appeal 2017-151

Dear Mr. Matzelevich:

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 Department of General Services ("DGS") to a request you submitted under the DC FOIA.

Background

On August 14, 2017, you sent a three-part FOIA request to DGS for records relating to a contract. One part of your request was for a "line item summary" of the contract.

On August 14, 2017, DGS responded to your request by asking for clarification about what you meant by "line item summary." That same day you clarified what you meant, by citing to an example from another contract. On August 15, 2017, DGS communicated to you that it would contact a program manager and get back to you. DGS subsequently provided you with copies of the contract, portions of which were redacted.

You appealed DGS's response by letter dated September 6, 2017. Your appeal states that you had not yet received a "line item summary" for the contract that you requested. Additionally, your appeal contends that the portions of the contract provided to you had redactions which were not labeled with a DC FOIA exemption, as required by the D.C Code.¹

This Office notified DGS of your appeal. DGS responded to this Office and explained that on September 12, 2017, it had provided you with copies of the contract, request for proposals, and amendments to the contract.² DGS's response also indicates that after communicating with you on the phone to understand what records you sought in relation to the line item information, DGS determined that it possessed no such records. DGS's response indicates that you "understood that [DGS] had no record. . ."

¹ DGS's response indicates this redaction was made pursuant to D.C. Official Code § 2-534 (a)(1). Your appeal appears to challenge only the labeling and not the redaction itself; as a result, this decision will not address this issue further.

² A copy of DGS's response 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).

Adequacy of the Search

We have interpreted your appeal as challenging, in part, the adequacy of DGS’s search for the records you requested. DC FOIA requires that a search be 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.*

Here you requested a “line item summary” relating to a specific contract. DGS’s FOIA officer asserted in response to your appeal that she reached out to you to make reasonable efforts to identify the record you were requesting. *See* 1 DCMR § 402.5. Based on her conversations with you and a DGS employee with programmatic experience, she determined that no records of the type requested exist. DGS determined that no relevant record repository existed to search. We accept DGS’s determinations as reasonable, and conclude that DGS’s response to your request was adequate.

Creating New Records

An adequate search does not require FOIA officers to act as personal researchers on behalf of requesters. *See, e.g., Bloeser v. DOJ*, 811 F. Supp. 2d 316, 321 (D.D.C. 2011) (“FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters...”); *Lamb v. IRS*, 871 F. Supp. 301, 304 (E.D. Mich. 1994) (finding requests outside scope of FOIA when they require legal research, are unspecific, or seek answers to interrogatories).

DGS has no obligations under FOIA to create a new record. *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.”); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36. “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). If DGS did not have a “line item summary” record regarding this contract at the time that you requested it, then DGS is not obligated to create the record for you.

Conclusion

Based on the foregoing, we affirm DGS’s response. Your appeal is dismissed.

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 DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Victoria Johnson, DGS (via email)