

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



Mayor's Office of Legal Counsel

October 10, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2017-163

Dear Mr. Brown:

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 District of Columbia Housing Authority ("DCHA") to your request for records.

Background

You submitted a FOIA request to DCHA for records relating to a specific U.S. Department of Housing and Urban Development ("HUD") form. Your request also cited to a specific federal regulation related to the form.

On September 19, 2017, the DCHA's FOIA officer responded to your request. In its response, DCHA indicated that a search was conducted and that it was granting your request by providing you with a responsive document, the requested HUD form.

On September 25, 2017, you filed this appeal. This Office notified DCHA of your appeal, and DCHA provided its response on October 2, 2017. In its response, DCHA explained that it had not denied your request. DCHA's response included a signed declaration of how its search was conducted. The declaration indicates that DCHA determined that the only repository likely to contain the requested information is the VisualHOMES database. The declaration states that DCHA searched this database, using the name provided by you, and turned over all responsive forms to you. Further, DCHA indicated that it provided to you a copy of a related contract. DCHA maintains on appeal that it conducted an adequate search and that it is not withholding records from you.

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 DCHA conducted an adequate search for the records at issue (records pertaining to a named HUD form). 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).

DCHA explained in its response to this Office, through a declaration, that the only repository likely to contain records responsive to your request is the VisualHOMES database – which is described by DCHA as “a fully integrated housing management and financial accounting software module utilized by DCHA to manage its public housing, housing choice voucher program . . . and financial accounting.” DCHA’s declaration states that this is the only repository likely to contain the information you requested. DCHA searched VisualHOMES using the name

and dates provided in your request. DCHA maintains that it provided all responsive documents to you, and that no additional documents were found in the search. We accept the representations made in DCHA's declaration as true. As a result, we find that DCHA conducted an adequate search.

Conclusion

Based on the foregoing, we affirm DCHA's 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: Mario Cuahutle, Associate General Counsel, DCHA (via email)