

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2017-22 & 2017-23**

March 3, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Requests 2017-22, 2017-23

Dear Mr. Sharp:

This letter responds to the administrative appeals<sup>1</sup> 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 Department of Transportation (“DDOT”) failed to timely respond to requests for records that you sent to DDOT.

Background

On February 13, 2017, you submitted two requests to DDOT: one for all records relating to yourself and the other for all records related to a specific notice of infraction and superior court case. On February 14, 2017, DDOT requested clarification to your requests and placed the requests on hold. On February 16, 2017, you appealed DDOT’s action, claiming that “DDOT has unlawfully placed this request on-hold [sic].”

When this Office notified DDOT of your appeal, DDOT responded that it had received your initial requests only a few days before, and that it had not denied your requests. Specifically, DDOT noted that it reached out to you on February 14, 2017, asking you to clarify your broad search requests. This communication was made pursuant to 1 DCMR § 402.5. In accordance with this regulation, DDOT placed your requests on hold, pending clarification from you as to what you are seeking. On February 14, 2017, you responded to DDOT and limited your request for records relating to yourself to all records created in a 2-year period. When DDOT asked you to specify further, you declined to narrow the terms of your request, stating “[t]he request stands as written.” You did not respond to DDOT’s attempt to clarify your request for records related to the notice of infraction and court case.

Analysis

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

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<sup>1</sup> These appeals have been consolidated into one determination because both involve the same agency and a similar issue.

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 . . .” *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See 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).

This Office’s jurisdiction is limited to reviewing a District agency’s denial of the right to inspect public records. *See* D.C. Official Code §2-537. DDOT’s position is that your right to inspect records was neither expressly nor constructively denied.

DDOT’s decision to place your requests on hold to seek clarification is not an unlawful denial but rather in accordance with applicable statutes and regulations. The DC FOIA mandates that agencies respond to “request[s] reasonably describing any public record.” D.C. Official Code § 2-532(c). The District of Columbia Municipal Regulations further clarify how an agency should respond to a request that does not reasonably describe a public record. The FOIA officer is supposed to contact the requester for additional information. 1 DCMR § 402.5. DDOT’s February 14, 2017 communication was made pursuant to 1 DCMR § 402.5 in an attempt to clarify overly broad and confusing requests. The deadline for responding to an overly broad request is suspended until the FOIA officer receives additional information that reasonably describes the public records sought. 1 DCMR § 405.6. As a result, DDOT was acting in accordance with 1 DCMR § 405.6 when it placed your requests on hold pending clarification.

Under D.C. Official Code § 2-532(e), a constructive denial occurs when an agency fails to respond within the timing requirements established in D.C. Official Code §§ 2-532(c) and (d). Because DDOT’s FOIA Officer did not receive your request until February 13, 2017, the agency was still within its statutory timeframe to respond to your request when you filed your appeal. Therefore, at the time of filing, you had not yet been constructively denied.

Your request for “any and all documents and e-mails that refer or relate to” yourself does not reasonably describe a public record. *Dale v. IRS*, 238 F. Supp. 2d 99, 104 (D.D.C. 2002) (describing a request for all records about a requester as: “Such a request does not describe the records sought with ‘reasonably sufficient detail’ in light of both statutory guidance and case law.”) Instead, your request asks public officials to comb through every single agency record that, without any guidance in identifying the context in which a public agency would be discussing or interacting with a private citizen. This Office agrees with DDOT, that your request for records about yourself is overly broad. Limiting the search to all records created or maintained by an agency over a 2-year period did not cure your deficient request. DDOT is not obligated to conduct a search until you have provided additional information that reasonably describes a public record, as your request is not considered received by the agency until you have furnished additional information. 1 DCMR §§ 402.5, 405.6.

DDOT was also correct to place your request for documents relating to a specific notice of infraction on hold. As DDOT indicated to you via email on February 14, 2017, notices of infractions are not documents maintained by DDOT. By choosing to not provide context to your request of DDOT for a record that it does not normally maintain, you have asked the agency to conduct a fishing expedition for a separate agency's records in the hopes that something exists. *See Truitt v. Dep't of State*, 897 F.2d 540, 545 (1990) ("A 'description' of a requested document would be sufficient if it enabled a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort.") This request of yours does not reasonably describe a public record maintained by DDOT, and DDOT does not have to conduct a search absent your compliance with the regulations. 1 DCMR §§ 402.5, 405.6.

DDOT was obligated to provide you with "[e]very reasonable effort . . . to assist in the identification and location of requested records." 1 DCMR § 402.5. DDOT has surpassed this burden, responding to you promptly by email, and offering to discuss the matter with you in person or over the phone. Nevertheless, on February 14, you declined to provide additional information to further clarify your request for records related to yourself beyond limiting the scope of the search to a 2-year period. You have declined to clarify in any way your request regarding the notice of infraction. Your requests will resume being processed once you have provided information "sufficient to permit the identification and location of the record . . . without an unreasonable amount of effort." 1 DCMR 402.5

### Conclusion

In light of the foregoing, we hereby dismiss your appeals as prematurely filed; however, the dismissal is without prejudice to you to assert any challenge, by separate appeals, to DDOT's subsequent response or failure to respond once you have narrowed your searches to reasonable ones.

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

cc: Karen Calmeise, Hearings/FOIA Officer, DDOT (via email)