

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-45**

April 24, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-45

Dear Mr. Sharp:

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 Metropolitan Police Department's ("MPD") response to your request for certain correspondence MPD received from the United States Department of Justice.

Background

You submitted a request to the MPD for a copy of "the August 17, 2012 letter sent from the U.S. DoJ to Assistant Chief Newsham which discusses, inter alia, Harris Corporation and/or any other documents sent from U.S. DoJ to the MPD that refer or relate to the Harris Corporation." In response, MPD sent you 6 pages of records responsive to your request, which were redacted in part to protect personal information. You appealed to this Office "for reasons including but not limited to: (1) lack of adequate search; (2) improper and unnecessary redactions; incomplete production, to wit only one of many letters was produced; and (4) lack of lawful authorization for denial."

MPD provided this Office with a written response to your appeal, explaining that it interpreted your request as being for a specific August 17, 2012 letter, which it provided to you. MPD's response further points out that you have not "sufficiently articulated the basis for the appeal." Moreover, MPD contends that you have not articulated why you believe that the redactions were improper. Upon request, MPD provided this Office with an unredacted copy of the document for in camera review.

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

One of the issues raised in your single sentence appeal is whether MPD conducted an adequate search for the records at issue. 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).

This Office agrees with MPD that you requested a specific letter that was provided to you and that MPD’s search was adequate. Your original request describes the subject matter of a letter (i.e. “please provide a copy of the August 17, 2012 letter . . . which discusses, inter alia, Harris Corporation and/or any other documents sent . . .”), and it appears that the letter provided to you corresponds with that description. To the extent that your request was for additional documents,

your original request is grammatically ambiguous and unclear. Further, your appeal does not clarify the ambiguity of your original request or explain the basis for your belief that additional August 17, 2012 letters discussing the Harris Corporation “and/or any other documents sent from U.S. DoJ to the MPD” exist. Here, MPD conducted an adequate search in response to your request for an August 17, 2012 letter discussing, among other things, the Harris Corporation. If you are seeking additional documents from MPD, you are entitled to file a separate FOIA request that clearly specifies these documents.

Reasonable Redaction

D.C. Official Code § 2-534(b) requires that an agency produce “[a]ny reasonably segregable portion of a public record . . . after deletion of those portions” that are exempt from disclosure. Here, MPD has made redactions on the basis of the personal privacy exemption, D.C. Official Code § 2-537 (a)(2). Having reviewed the document in camera, this Office disagrees with MPD’s assessment in part. The redactions made on pages 3, 4, and 5 do not implicate a privacy interest, as they make reference to an employment position (e.g., “Assistant Director”) and do not identify an individual. Job positions do not hold privacy interests, individuals do. In order to be considered personal identifying information, the information must specify an individual. Accordingly, MPD should provide you with a version of the responsive letter without the redactions originally made to pages 3, 4 and 5. As to the remaining redactions of names, this Office finds that MPD redacted them properly. See *Banks v. DOJ*, 813 F. Supp. 2d 132, 142 (D.D.C. 2011).

Conclusion

Based on the foregoing, we affirm MPD’s decision in part and remand in part. MPD shall provide you with a copy of the responsive letter, as specified above, within 10 business days. 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: Ronald Harris, Deputy General Counsel, MPD (via email)