

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-56, 2017-57**

May 4, 2017

VIA ELECTRONIC MAIL

Jarrold S. Sharp, Esq.

RE: FOIA Appeal 2017-56, 2017-57

Dear Mr. Sharp:

This letter responds to the twentieth and twenty-first¹ administrative appeals that you have submitted this year to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you assert that the Department of Motor Vehicles ("DMV") improperly withheld records you requested under the DC FOIA.

Background

On April 4, 2017, and on March 20, 2017, you submitted nearly identical requests to the DMV for all records related to a notice of infraction and a Superior Court case. Additionally, you requested communications among DMV employees that related to "Jarrod Sharp" (yourself). Finally, you requested "the ex parte communication sent by DC DMV to the Superior Court." These requests are nearly identical to your February 14, 2017 request to DMV, which was at issue in FOIA Appeal 2017-24.

The DMV responded to your April 4 and May 20 requests on April 20, 2017, and on April 21, 2017, reminding you of the documents that it had already produced to you in response to your previous request. The DMV further attached additional emails that were retrieved in a subsequent search. These emails consisted primarily of communications generated after your initial FOIA request concerning your FOIA request. The DMV reiterated that no responsive records were found for *ex parte* communications. The DMV also informed you that you remain delinquent in submitting payment for fees the DMV charged you on February 23, 2017, pursuant to 1 DCMR 408.1(c)² in connection with your previous FOIA request.

¹ You filed two nearly identical appeals of two nearly identical requests, FOIAXpress matters 2017-FOIA-02501 and 2017-FOIA-02885. It is unclear why. This decision constitutes our response to both appeals.

² As noted in FOIA Appeal 2017-24, DMV is authorized under 1 DCMR § 408.1(c) to charge you for your use of DC FOIA. You should note that your failure to pay the \$9.00 fee in a timely manner will result in you having to prepay future DC FOIA requests pursuant to D.C. Code § 2-532(b-3).

On April 20, 2017, and April 21, 2017, you appealed the DMV's responses, stating "[w]ithout explanation or legal authority, the DMV continues to refuse to provide the case file that the DMV presented to the court, but failed to provide to petitioner. The denial is attached. Here is the relevant line from DC case search: 12/22/2016 Miscellaneous Docket Records received from the Department of Motor Vehicle Adjudication Services Filed. (1 volume) 2016 CA 007953 T: In The Matter Of: SHARP, JARROD S." You appear to believe that a "case file" exists that DMV transmitted directly to a judge and that DMV has failed to disclose to you.

The DMV provided this Office with a response to your appeals on April 27, 2017.³ The DMV's response reiterates that it has already disclosed to you all responsive documents pertaining to the notice of infraction and the Superior Court case you requested. Since making your initial request, additional documents have been generated, and these documents have also been provided to you. Regarding the *ex parte* communication you continue to seek, the DMV asserts that no such record exists, and, as we held in FOIA Appeal 2017-24, we accept DMV's representation.

Since you are an attorney, this Office need not remind you as to the precise meaning of an "*ex parte* communication," beyond stating that providing a record to the clerk of court does not constitute an *ex parte* communication. In your appeal you have copied and pasted a section of a docket that purportedly indicates that the DMV filed a record with the clerk of court. It is unclear, however, how this is evidence of an *ex parte* communication between DMV and a judge, or how this is indicative of a "case file" document existing, beyond that which you have received. Your appeal provides no basis for this Office to question DMV's assertions that it has not engaged in *ex parte* communications. It appears that you continue to seek the documents that DMV provided to the court (i.e., the "case file" mentioned in your appeal), but as DMV has informed you at least three times, and as we stated in FOIA Appeal 2017-24, those documents have been transmitted to you.

As this Office held in the decision to FOIA Appeal 2017-24:

Here, the DMV denies that any *ex parte* communication was made in the case that is the subject of your request. Regarding your claim that "the Court confirms receipt of the communication," the DMV offers the explanation the the communication received by the court was the file customarily provided to the court's clerk. Additionally, all responsive documents related to the notice of infraction and Superior Court were disclosed, and the DMV queried all of the individual employees named in the request. Therefore, DMV has identified the relevant record repositories likely to contain responsive documents and has searched them. As a result, we conclude that DMV has conducted an adequate search.

FOIA Appeal Decision 2017-24, at 3.

³ The response consisted of declarations, which are attached.

This Office continues to find DMV's search for records pertaining to you, Jarrod S. Sharp Esq., to be adequate.

Conclusion

Based on the foregoing, we affirm DMV's decisions and hereby dismiss your appeals.

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 the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Kelly J. Davis, Assistant General Counsel, DMV (via email)
David Glasser, General Counsel, DMV (via email)