

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-58**

May 8, 2017

VIA ELECTRONIC MAIL

Christopher A. Zampogna

RE: FOIA Appeal 2017-58

Dear Mr. Zampogna:

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 under the DC FOIA.

Background

On November 2, 2016, you submitted a request to MPD for "any and all public records, including, but not limited to, police body cam video, police dash cam video, and any statements of witnesses and those persons" related to a specific traffic accident. On November 4, 2016, MPD bifurcated your request into two portions, one for body-worn camera footage, and the other for the remaining records (e.g., documents and statements). You maintain that initially, MPD produced only a copy of the relevant Traffic Crash Report. As a result, on January 19, 2017, you informed MPD that its production was insufficient. According to your appeal, on March 3, 2017, an MPD FOIA officer instructed you to resubmit your initial request. On March 23, 2017, your office submitted a renewed request for the same records and asked for field notes from other officers who reported to the scene of the accident and interacted with witnesses or accident victims. On March 30, 2017, MPD denied your new request as duplicative.

Following MPD's denial of your second request, you filed an appeal on the grounds that MPD has repeatedly failed to comply with your FOIA requests. On May 2, 2017, MPD sent this Office its response to your appeal.¹ MPD explained that after your request was split into 2 processing numbers, the FOIA technician assigned the requests resigned. The replacement technician reviewed the file and determined that a photograph had mistakenly been omitted and then sent it to you. The MPD advised this Office that to respond to your request, FOIA staff sent a search request to the First Police District, where the traffic accident at issue took place. The First District certified that it conducted a search of paper and electronic files and provided responsive documents to the MPD's FOIA Office.² MPD FOIA staff also requested that the main office for

¹ A copy of MPD's response to your appeal is attached.

² A copy of the certification is attached.

patrol services and administrative staff conduct a search, which did not yield any additional responsive documents.

Discussion

It is the public policy of the District of Columbia government 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 . . .” *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

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), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Com’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

While the MPD addressed the underlying requests in an unusual procedural manner, the primary issue on appeal is whether the MPD conducted an adequate search for the records you sought. To determine the adequacy of a search, 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.*

Here, MPD identified the most likely repositories for responsive documents as being the paper and electronic files of the First Police District, where the accident took place, and the main office for patrol services. MPD asserts that searches of those locations were ordered and conducted, and no further responsive records, such as field notes, were found. MPD also advised this Office that if responsive body-worn camera footage existed, it would be maintained at the First District. Therefore, MPD has identified the relevant record repositories likely to contain responsive documents and has searched them. As a result, we conclude that MPD has conducted an adequate search and produced all responsive records.

Conclusion

Based on the foregoing, we affirm the MPD's decision and hereby dismiss your appeal.

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: Ronald B. Harris, Deputy General Counsel, MPD (via email)