

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-95**

July 5, 2017

VIA ELECTRONIC MAIL

Mr. Michael Dorsey

RE: FOIA Appeal 2017-95

Dear Mr. Dorsey:

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”), asserting that the Department of Motor Vehicles (“DMV”) improperly withheld records you requested.

Background

On April 27, 2017, you submitted a FOIA request for “The names of the contact persons at the respective companies, including the companies’ addresses, zip codes, and telephone numbers that have been expelled from the Fleet Adjudication Program and the Rental Program within the past 18 months. Please provide the vehicle tag numbers, including the states that issued the vehicle tags.”

On May 18, 2017, DMV denied your request in part, stating that it did not possess a record as described in your request (i.e. a list of “expelled” persons), and that DMV was not obligated to create such a record. On June 19, 2017, you appealed DMV’s partial denial, stating your desire for the records described in your request. In your appeal, you assert “[t]he information is much the same as requesting a person’s Social Security number and name and the agency says it only has the Social Security number but cannot locate the person’s name – when the two are housed together.” Further, your appeal references a decision by a Judge Cushenberry that was “issued during the 1980’s” that you believe entitles you to the documents described in your request. A copy of the order was not provided in your appeal.

This Office notified DMV of your appeal. On June 27, 2017, DMV responded by indicating that it “does not maintain such a record on former fleet members. In that instance, DMV would be required to create a record pertaining to this specific situation.”¹

¹ A copy of DMV’s statement is attached.

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).

The primary issue raised by your appeal is whether DMV is obligated to create a record for you that it does not already maintain. An adequate search does not require FOIA officers to act as personal researchers on behalf of requesters. *See, e.g., Bloeser v. DOJ*, 811 F. Supp. 2d 316, 321 (D.D.C. 2011) (“FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters...”); *Frank v. DOJ*, 941 F. Supp. 4, 5 (D.D.C. 1996) (an agency is not required to “dig out all the information that might exist, in whatever form or place it might be found, and to create a document that answers plaintiff’s questions”).

Here, DMV has represented that it does not maintain a list of expelled fleet members, and that to provide you with such a record would require conducting an independent query for each former fleet member to determine the reason the member is no longer in the fleet. As a result, your request more closely resembles an interrogatory or a request for DMV to create a compilation of fleet expulsions, which it is not required to do under FOIA. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency “has no duty either to answer questions unrelated to document requests or to create documents.”); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36. The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

Conclusion

Based on the foregoing, we affirm DMV's decision. 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: David Glasser, General Counsel, DMV (via email)