

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-99**

July 19, 2017

Mr. Widmon Butler

RE: FOIA Appeal 2017-99

Dear Mr. Butler:

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 records under the DC FOIA.

Background

On June 7, 2017, you submitted a request under the DC FOIA to MPD seeking records relating to a 2013 letter sent from MPD’s Internal Affairs Division (“IAD”) to the US Attorney’s Office. On June 21, 2017, MPD granted your request in part and denied it in part – redacting portions of records disclosed to you pursuant to D.C. Official Code §§ 2-534(a)(2), (a)(6).

On appeal you challenge MPD’s response. Your appeal clarifies, that you were not seeking documents that MPD has already provided to you in relation to an employment proceeding, but instead “all information not given [to you] from June 2013 through June 1, 2014, which was submitted by MPD’s Internal Affairs Office to the DC-US Attorney’s Office including the date-stamped referral letter . . .”

MPD provided this Office with a response to your appeal on July 12, 2017.¹ In its response, MPD proffered that it has conducted “three separate searches for the dated referral letter.” MPD’s response indicated that no responsive record was located. MPD’s response provides a description of the search it conducted. MPD identified the IAD’s record and electronic files as the record repositories that “any referral letters from the department to prosecutorial authorities would be maintained.” MPD’s response indicates that IAD conducted a search in these repositories, which did not yield the date-stamped correspondence.

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

¹ A copy of MPD’s response is attached for your reference.

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).

Since MPD asserts that it has not withheld any responsive records from you, the primary issues in this appeal are your belief that more records exist and your contention that MPD conducted an inadequate 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: (1) make a reasonable determination as to the locations of records requested; and (2) 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 includes determining 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).

Your appeal clarified that you were requesting date-stamped correspondence from the MPD to the US Attorney’s Office. MPD’s response identified the relevant locations for such records: the paper and electronic files of the IAD. MPD indicated that IAD conducted searches of these locations. The search did not identify the date-stamped responsive documents. Further, MPD’s

response indicates that it has conducted three separate searches for responsive records in relation to your request.

Although you believe MPD has “twice refused to provide additional information,” under applicable FOIA law, the test is not whether any additional documents might conceivably exist, but whether MPD’s search for responsive documents was adequate. *Weisberg*, 705 F.2d at 1351. Based on MPD’s response to your appeal, we find that MPD conducted an adequate search.

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 Harris, Deputy General Counsel, MPD (via email)