

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel

October 24, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-9 & 2018-12

Dear Mr. Brown:

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"), challenging the response provided by the Department of Motor Vehicles ("DMV") to your request.

Background

On September 14, 2017, you submitted a FOIA request that states:

Under the FOIA I'm seeking to know the status of the MOTION TO VACATE FILED WITH TOYA MILLER @ DMV regarding [a specific case.] IM SEEKING TO KNOW IF THE REASONABLE ACCOMMODATION REQUEST DATED 9/13/17 WAS GRANTED OR DENIED UNDER THE ADA REGARDING THE MOTION TO VACATE and the hearing regarding [a tag number]. I HEARING WAS HELD BUT NO DECISION IS CLEAR REGARDING THE REQUEST. IM ALSO SEEKING ONE FREE COPY OF THE TRANSCRIPT FOR REVIEW PROCESS. ADA request was for the two tickets that got the car booted. In addition I'm seeking the decision of hearing record [of a specific case] regarding the reasonable accommodation of the two outstanding boot eligible ticket. All others was not the matter just the motion to VACATE

On October 3, 2017, DMV denied your request. DMV advised you that it was not obligated by DC FOIA to answer questions for you. Nevertheless, DMV answered some of the questions posed in your request, and informed you that a copy of the transcript that you sought was available for a payment of \$50, pursuant to 18 DCMR 3017.3,<sup>1</sup> or that you could receive a diskette recording of the hearing for free.

---

<sup>1</sup> 18 DCMR § 3017.3 states, "Transcripts may be ordered upon payment of a deposit of fifty dollars (\$50). This fee shall be refunded to any appellant who is successful in an appeal."

On October 10, 2017, you appealed DMV's denial twice.<sup>1</sup> In your first appeal, you stated, "DMV HAS FAIL [sic] TO PROVIDE THE PERSON WITH THE INFORMATION REGARDING THE TIMELINE OF THE MOTION TO VACATE REGARDING THE TWO OUTSTANDING TICKET FOR A HEARING WITHIN A YEAR OF ADMISSISON AND WITHIN 60 DAYS OF THE BOOT." In your second appeal, you stated "I'm seekimng [sic] all trancripts [sic] regarding the hearing in the requested FOIA."

This Office notified DMV of your appeal. On October 24, 2017, DMV responded.<sup>2</sup> DMV's response reiterates that in accordance with regulations, a transcript is available to you for a \$50 deposit. DMV explains that it does not already maintain a copy of the transcript and is not obligated to create one for you for free. Further, DMV reiterates its offer to provide to you a "diskette of the hearing" for free. Additionally, DMV's response asserts that the substance of your appeal differs from what you originally requested – primarily your original request did not seek a timeline of the motion to vacate as articulated in your appeal. Regardless, DMV explains that it is not obligated by DC FOIA to answer questions. Lastly, DMV's response provides an explanation of the administrative procedure regarding the tickets and hearing referred to in your request.

### 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 in 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").

---

<sup>1</sup> This decision will address both appeals.

<sup>2</sup> A copy of DMV's response is attached.

Here, DMV has represented that it does not have a copy of the transcript that you seek. Such a transcript may be created, pursuant to 18 DCMR § 3017, for a \$50 deposit. DMV has an audio recording of the hearing, which it has offered to provide to you on a diskette for free. DMV has not transcribed this recording, therefore a transcript does not exist. Furthermore, DMV is not obligated to create this record for you.

Additionally, the rest of your request and appeal closely resembles an interrogatory – e.g. “IM SEEKING TO KNOW IF THE REASONABLE ACCOMMODATION REQUEST DATED 9/13/17 WAS GRANTED OR DENIED.” DMV is not obligated to answer your questions concerning administrative processes. *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; FOIA Appeal 2017-95. 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)