

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR**



**Mayor's Office of Legal Counsel**



November 1, 2017

VIA U.S. MAIL

Mr. Hakeem Blaize

RE: FOIA Appeal 2018-18

Dear Mr. Blaize:

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 October 17, 2017, you submitted to MPD a request for footage from a camera near 1133 Capitol Street NW from September 20, 2017. Your request indicated that there was an accident at around 2 p.m. that day, which you believe might have been captured by the camera and could assist you in an insurance claim.

On October 18, 2017, MPD responded to your request by informing you that it did not possess the records which you requested. MPD’s denial explained that the “retention period for the requested video footage has expired and the footage [was] automatically overwritten.” Such footage, MPD’s denial explains, is generally only maintained for “ten (10) calendar days (Saturday, Sundays, and holidays included).” Footage is usually preserved longer if it is evidence of a traffic violation.

Upon receiving MPD’s response, you submitted an appeal to this Office. Your appeal states, in total, “We did not know the correct information or how to go about getting the right information or at the right time. The insurance company is trying to deny my claim unless we get the proper information.”

MPD provided this Office with a response to your appeal on October 25, 2017.<sup>1</sup> In its response, MPD reasserted its position that footage you seek was overwritten in accordance with MPD’s retention schedule. MPD’s response points out that your appeal does not assert that there were

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<sup>1</sup> A copy of MPD’s response is attached for your reference.

any traffic violations that might have caused the footage to be maintained. MPD argues that because no video has been retained, no records are being withheld such that this appeal should be dismissed.

### 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 in this appeal is your apparent belief that responsive records exist; therefore, we consider whether or not MPD conducted an adequate 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).

MPD asserts here that the retention period for the September 20, 2017 footage you seek would have ended on September 30, 2017, in accordance with MPD's 10-day retention schedule for neighborhood cameras. You submitted your request on October 17, 2017, by which time the responsive records had already been overwritten in accordance with MPD's retention schedule. Your appeal has not stated facts which would cause us to believe that the footage should have been maintained (i.e., you have not alleged that a traffic citation was issued which would have caused the footage to have been maintained as evidence). 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). We accept MPD's representation that responsive records no longer exist based on MPD's stated adherence to its retention policy.

#### 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)