

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel

November 2, 2018

VIA U.S. MAIL

Kenneth Schnaubelt

RE: FOIA Appeal 2018-20

Dear Mr. Schnaubelt:

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 assert that the Office of Risk Management ("ORM") did not adequately respond to your request for records under the DC FOIA.

Background

On April 13, 2017, you mailed a FOIA request to ORM seeking four categories of records related to a prior complaint you filed with ORM. On September 1, 2017, ORM mailed you a response to your request. ORM's response asserted that it disclosed all responsive records related to your complaint; however, ORM acknowledged that its search did not find certain phone records associated with your complaint.

On October 19, 2017, this Office received your FOIA appeal. Your appeal challenges the delay of ORM's response to your request and asserts that ORM did not adequately respond to portions of your request. Specifically, you assert that ORM's response only addressed one of two complaints involved in your FOIA request.<sup>1</sup>

On the day your appeal was received, this Office notified ORM of your appeal. ORM responded to your appeal on October 20, 2017.<sup>2</sup> ORM's response included a letter dated August 14, 2017, acknowledging receipt of your FOIA request and apologizing for the delay of its processing due to an administrative error.<sup>3</sup> ORM's response reasserted that all responsive documents associated with the claim initiated by your complaint were provided to you. Further, ORM explained that it searched its phone records using your two known telephone numbers; however, its search did not recover additional records. Additionally, ORM claimed that it cannot determine if other calls it received are related to your complaint.

---

<sup>1</sup> After reviewing your FOIA request, the request only makes reference to a singular complaint and claim number. As a result, your assertion that ORM failed to respond to your request for a second complaint will not be addressed further.

<sup>2</sup> A copy of ORM's email is enclosed.

<sup>3</sup> A copy of ORM's acknowledgement letter is enclosed.

## 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 two main issues raised in your appeal concern the timing and thoroughness of ORM’s response to your appeal. Regarding the delay of ORM’s response, this Office’s jurisdiction is limited to “review[ing] the public record to determine whether [a record] may be withheld from public inspection.” D.C. Official Code § 2-537(a). Since ORM has provided you with a response, the delay of ORM’s response is now moot in terms of this Office’s jurisdiction.<sup>4</sup> We note that your appeal asserts that ORM did not include an explanation or apology for its delay in its response to your request; however, ORM did mail a separate letter dated August 14, 2017, which offered an explanation and apology.

Regarding your assertion that ORM did not respond adequately to portions of your request, we note that aspects of your request more closely resemble questions and interrogatories rather than requests for existing records. Under FOIA, an agency is not obligated to create new records or to answer interrogatories. *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.”). 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).

Items 2 and 3 of your request are only seeking existing records. Items 1 and 4, while framed as requests for records, are also seeking an answer to your question of why ORM failed to investigate your complaint to your satisfaction. Under DC FOIA, ORM is required to produce documents in its possession; it is not obligated to answer questions. ORM asserts that it disclosed all of the relevant records it maintained in response to your complaint. ORM is not required to

---

<sup>4</sup> You could have filed an appeal with this Office for constructive denial prior to ORM’s response based on the delay of ORM’s response.

answer questions regarding your complaint or its investigations; therefore, ORM's response to your request was adequate.

Conclusion

Based on the foregoing, we affirm ORM'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: Robert Preston, FOIA Officer, ORM (via email)