

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



Mayor's Office of Legal Counsel



November 21, 2017

VIA REGULAR MAIL

Mr. Matthew Reeder

RE: FOIA Appeal 2018-29

Dear Mr. Reeder:

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 Metropolitan Police Department (“MPD”) improperly responded to your request under the DC FOIA.

Background

On November 2, 2018, you submitted a request to MPD for:

the details of the contractual relationship between public.cite-web.com and the city. Specifically, I request documents outlining the fee structure for the private web service (is it an annual flat-rate contract, or is the fee assessed as a percentage of revenue generated, etc.), and information about the beneficial owners of the entity providing the web-based ticket payment service.

The next day, MPD closed your request and notified you that the records you seek were not in the possession of MPD and should instead be requested from the Department of Motor Vehicles (“DMV”).

On November 6, 2017, you filed this appeal. The entirety of your appeal states:

Closing request 2018-FOIA-00658 was inappropriate. Because the government of Washington DC is a single agency for purposes of 5 USC 552 as defined by 5 USC 562(1) (incorporating the definition contained in 5 USC 551(1)(D)), the original request should be referred to the DMV by the Metro Police.

That same day, we notified MPD of your appeal and asked for a response. MPD did not respond; however, there is sufficient information in the record for this Office to make a decision.

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 crux of your appeal is your belief that MPD should have transferred your request – your appeal does not challenge MPD’s assertion that MPD does not possess the records you seek. In support of this belief, you cite to and misinterpret an inapplicable federal law.

First, the District of Columbia government is subject to the DC FOIA and not the federal FOIA. *See* D.C. Official Code § 2-531, *et seq.* Your appeal’s citation to the United States Code is not applicable.

Second, your appeal misinterprets the law that you cite. Your appeal states that the “government of Washington DC is a single agency for purposes of 5 USC 552 as defined by 5 USC 562(1) . . .” In fact, the law says the exact opposite. 5 U.S.C. § 562(1) states “‘agency’ means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include— . . . (D) the government of the District of Columbia.” The Supreme Court agrees with this plain reading of 5 U.S.C. § 562. *See Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 16 (1974) (“But ‘agency’ is broadly defined to mean ‘each authority of the Government of the United States,’ except . . . the government of the District of Columbia. . . .”).

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). Under DC FOIA, each agency constitutes a separate “public body.” *See* D.C. Official Code § 2-502(18A). The obligation to respond to a request is held by each individual agency and is not shared between agencies. *See* 1 DCMR § 401.

Here, MPD told you that it does not retain the records you seek, but suggested to you that DMV might possess such records. DC FOIA does not obligate MPD, as you posit on appeal, to transfer

your request to another public body. MPD's duty was to disclose to you any responsive records in its possession. Because MPD did not possess responsive records, it was appropriate for MPD to close your request.

Conclusion

Based on the foregoing, we affirm 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.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)