

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel

November 15, 2018

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-36

Dear Mr. Brown:

This letter responds to the ninth administrative appeal you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you are challenging the response provided by the Executive Office of the Mayor ("EOM") to your request.

Background

On November 13, 2017, you submitted a request to EOM, which states:

All documents regarding District of Columbia Housing Authority and Keller Williams Capitol Properties registered agent corporate file number and date of filing in connection with Superior Court of the District of Columbia case number 2017 sc36014 set for hearing on dec 5 2017.

On November 14, 2017, EOM denied your request, along with two other requests. In its denial EOM stated:

As the FOIA Officer for EOM, I only have the ability to conduct searches of, and respond to requests for, EOM records. EOM is not in possession of any documents responsive to your request.

In your single-sentence appeal, you state in pertinent part: "I'm seeking to appeal this decision for the following reasons: . . . the registered [sic] agent for the corporation was not provide [sic] by the Mayor." This Office notified you that we did not consider your statement to be a sufficient "Statement of the circumstances, reasons or arguments advanced in support of disclosure," in accordance with 1 DCMR § 412.4. You indicated by telephone that you would not supplement your appeal.

This Office did not request that EOM respond to your appeal, because there is sufficient information in your filing for us to render a decision on the matter.

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).

Adequacy of the Search

The primary issue raised by your appeal is whether EOM conducted an adequate search for the records at issue. 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 make a reasonable determination as to the locations of records requested and 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 may include a determination of 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).

Here, you have not provided any argument to explain your belief that EOM would be in possession of DCHA's records or would be in any way responsible for maintaining records pertaining to "registered agent corporate file number and date of filing . . ." As a result, we accept EOM's statement in its denial letter that "EOM is not in possession of any documents responsive to your request." 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 do not believe that you have been denied access to any records possessed by EOM, by virtue of EOM not normally possessing the type of records you requested here.

Conclusion

Based on the foregoing, we affirm EOM'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: Erika Satterlee, Associate Director, EOM (via email)