

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel

November 15, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-37

Dear Mr. Brown:

This letter responds to the tenth 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 Office of the Chief Medical Examiner ("OCME") to your request.

Background

On October 10, 2017, you submitted a request to OCME, which states:

Im seeking any health information regarding curing lead poisoning [sic] and the effect on children and adult

On November 13, 2017, OCME requested that you clarify what you meant by your request, pursuant to 1 DCMR § 402.5. You responded that same day by saying "I'm seeking the number of death cost by lead posioning [sic] (bullets & guns) in District of Columbia." OCME asked you to clarify a date range for documents and to clarify what you meant by "death cost." You responded by stating you meant "Cost/cause by death" and that you were seeking records from "1871 unit [sic] 2017."

On November 15, 2017, you filed an appeal. The appeal description stated only "Request Created." Attached to your appeal was a denial letter from an unrelated FOIA request submitted to a different District agency. As a result, your appeal was not properly filed as it did not include a "Statement of the circumstances, reasons or arguments advanced in support of disclosure" or a "Copy of any written denial," as required by 1 DCMR § 412.4. Nonetheless, there is sufficient information before us to render a decision on this matter.

Your request amounts to a question (i.e., asking for "the number of death cost by lead poisoning [sic] (bullets & guns) in District of Columbia"). As this Office has explained to you before, DC FOIA does not compel agencies to answer your questions; DC FOIA gives you the right to inspect records. *See* FOIA Appeal 2018-9; FOIA Appeal 2018-10; FOIA Appeal 2018-12; FOIA Appeal 2018-33; FOIA Appeal 2018-34; FOIA Appeal 2018-35.

Your request does not reasonably describe a record as required by 1 DCMR § 402, and OCME is not obligated to answer your questions. *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).

Because we find that your request does not reasonably describe a record, we need not reach the question of the adequacy of the search. We also note that by requesting records from 1871 to 2017, your request is likely not one which can be completed with “reasonable efforts.” *See* D.C. Official Code § 2-532(f)(1) (“ ‘Reasonable efforts’ means that a public body shall not be required to expend more than 8 hours of personnel time to reprogram or reformat records.”)

Conclusion

Based on the foregoing, we affirm OCME’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: Mikelle L. DeVillier, General Counsel, OCME (via email)