

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel

December 5, 2017

VIA ELECTRONIC MAIL

Mr. Michael W

RE: FOIA Appeal 2018-43

Dear Mr. Michael W:

This letter responds to administrative appeal you have submitted to the Mayor 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 Department of Corrections ("DOC") to your request.

Background

On August 3, 2017, you submitted a series of questions to DOC through FOIAXpress, which were:

Was the Freedom of Information Act (FOIA) not enacted on July 4, 1966? Do you believe people should have access to information? Why are there so many barriers to obtaining one's own record? Is the Department of Correction a Federal Agency? What records does the Department of Records hold with regards to I, Michael [W]? Will you reveal all records within your possession? If no, will you state the reason for you having not done so?

On August 24, 2017, DOC responded to you by informing you that:

Questions are not [a] proper FOIA request. You must identify and describe records sought and a due diligence search will be conducted. If the records identified and described have been created and maintained, they will be disclosed, subject to FOIA exemptions. You are advised to submit a proper FOIA request.

On November 10, 2017, you appealed DOC's response. In your appeal, you ask:

Do you believe people should have access to information? Why are there so many barriers to obtaining one's own records? What records if any does the Office of the Mayor hold with regards to I, Michael [W]? Will you reveal all records within your possession? If no, will you state the reason for you having not done so? Why block request for discovery in a civil case where immigrant civil right was grossly infringed? Who is Oluwasegun Obebe? Which undergraduate and graduate school has he previously attended? What are his respective roles and responsibilities?

When this Office inquired about the basis of your appeal, pursuant to 1 DCMR 412, you responded by asking:

Thank you for your e-mail. Apologies for the late reply. Is the Office of the Mayor of the opinion that I have not made a FOIA request to the Department of Corrections about records related to me? Why are there so many barriers to obtaining one's own records? Why not proactively disclose information? Is a transparent government not also an efficient one? Why is discrimination wrong?

This Office asked DOC to respond to your appeal, but DOC did not respond. However, there is sufficient information in your filing for us to render a decision on the matter.

Your original filing with DOC amounts to a series of questions and not a request for records. As DOC explained to you before, DC FOIA does not compel agencies to answer your questions; DC FOIA gives you the right to inspect records. *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).

Further, to the extent that your original filing can be construed as a request for records, it does not reasonably describe a record as required by 1 DCMR § 402. *See Dale v. IRS*, 238 F. Supp. 2d 99, 104-05 (D.D.C. 2002) (concluding that request seeking "any and all documents . . . that refer or relate in any way" to the requester failed to reasonably describe records sought and "amounted to an all-encompassing fishing expedition of files at [the agency]").

As a result, DOC's August 24, 2017, letter asking that you resubmit a request that reasonably describes a record was consistent with 1 DCMR § 402.5's requirement that in the event of an ambiguous request, agencies should contact requesters to "supplement the request with the necessary information." You have failed to submit a proper FOIA request; therefore, DOC's response was appropriate.

Conclusion

Based on the foregoing, we affirm DOC'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: Oluwasegun Obebe, Records, Information & Privacy Officer, DOC (via email)