

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



Mayor's Office of Legal Counsel



January 12, 2018

VIA ELECTRONIC MAIL

Mr. Guillermo Rueda

RE: FOIA Appeal 2018-59

Dear Mr. Rueda:

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”), on the grounds that the Department of Consumer and Regulatory Affairs (“DCRA”) failed to adequately respond to your request for certain records.

Background

On November 17, 2017, you submitted a request to DCRA seeking “photos, inspection reports and the name of the inspector that determined the site is secure,” relating to a specified address. On December 14, 2017, DCRA provided you with 5 responsive documents.

On December 28, 2017, you appealed DCRA’s response – stating that you believed the response was “non-responsive” because it did not include information relating to “[a]n inspection . . . made on 11/15/17.”

This Office notified DCRA of your appeal, and it responded on January 9, 2018.¹ In its response, DCRA described its process of searching for responsive records, which the agency started on November 20, 2017. DCRA’s response indicates that it used the date it began searching for records as the “cut-off” date for its search, such that records generated after that date would not be included in the search. DCRA’s response indicates that the November 15, 2017, inspection noted in your appeal had not yet been entered into DCRA’s system by the November 20, 2017, “cut-off” date. As a result, this inspection was not included in DCRA’s December 14, 2017 response. Nevertheless, DCRA’s response to this appeal included an attachment containing responsive information relating to the November 15, 2017 inspection that was not available when DCRA began its search.

¹ A copy of DCRA’s response is attached for your reference.

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.

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 DCRA should have included records from a November 15, 2017 inspection in response to your November 17, 2017 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).

Here, DCRA described the search it conducted in response to your request. DCRA indicated that by November 20, 2017, your request had been sent to the appropriate divisions within DCRA for processing. The result of this search produced 5 responsive records. Your primary contention on appeal is that this search should have included records relating to a November 15, 2017, inspection. DCRA’s response on appeal indicates that those records were not yet in DCRA’s database at the time it conducted its search on November 20, 2017. *See Pub. Citizen v. Dep’t of State*, 276 F.3d 634, 644 (D.C. Cir. 2002) (favoring “date-of-search cut-off” because its use “might . . . result[] in the retrieval of more [responsive] documents” than would a cut-off based on date of request); *Defenders of Wildlife v. U.S. Dep’t of the Interior*, 314 F. Supp. 2d 1, 12 n.10 (D.D.C. 2004) (recognizing that records created after date-of-search “cut-off” date “are not covered by [plaintiff’s] request”); *Bonner v. U.S. Dept. of State*, 928 F.2d 1148, 1152 (D.C. Cir. 1991) (finding that, “[t]o require an agency to adjust or modify its FOIA responses based on post-response occurrences could create an endless cycle of judicially mandated reprocessing”). Nonetheless, DCRA has attached these records in response to this appeal, which you were carbon copied of on January 9, 2018.

We accept DCRA’s representation that it provided to you all responsive records in its possession at the time that it processed your request. As a result, we reject your argument that DCRA’s response was not responsive.

Conclusion

Based on the foregoing, we affirm DCRA's response to your request, insofar as the searches it conducted were adequate.

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.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erin Roberts, FOIA Officer, DCRA (via email)