

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

February 14, 2007

BY US MAIL AND E-MAIL

Re: Freedom of Information Act Appeal

Dear [REDACTED]

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. §§ 2-531 *et seq.* (the "DC-FOIA"), dated January 17, 2007, initially received in this office on January 23, 2007, re-submitted by letter dated January 31, 2007, and received in this office February 8, 2007¹ (the "Appeal"). We accept your Appeal as of that date. You delivered a copy of the Appeal directly to the respondent agency, the District of Columbia Department of Corrections ("DOC"). DOC submitted to us a response to the Appeal by letter, dated February 8, 2007 ("DOC Response"). You are referred to herein as the "Appellant."

Background

The Appellant's initial DC-FOIA request, dated July 10, 2006 ("FOIA Request"), set forth below, verbatim, sought the following:

"All e-mails, from June 3, 2006 through June 28, 2006, sent by or received by the director of corrections, the deputy director of corrections, the warden of the D.C. jail and the general counsel of the department of corrections."

DOC initially sought additional time to complete the search for the records, in a letter dated July 26, 2006. Then, by letter dated August 14, 2006 (the "DOC Denial"), DOC advised Appellant that they were denying the FOIA Request on two grounds, stating that the "request would require an unreasonably burdensome search, and does not reasonably describe the records

¹ Although the re-submitted appeal is dated January 31, 2007 and indicates that it was delivered to this office via an overnight mail service, a hard copy of the letter was never received. Instead, Mr. Oluwasegun Obebe forwarded a copy of the letter concurrently with the delivery of DOC's response to the Appeal.

you are requesting...” DOC further advised Appellant to resubmit the FOIA Request after narrowing the scope of the request.

Appellant argues on appeal that (i) the records can be located with minimal effort and (ii) the FOIA Request reasonably describes the records it seeks.

Discussion

It is the public policy of the District government 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 2001 Ed. § 2-531. In aid of that public policy, the FOIA creates the right “to inspect ... and ... copy any public record of a public body” *Id.* § 2-532(a). The District FOIA Regulations require that a FOIA request reasonably describe the desired records. Where possible, the requestor shall supply specific information regarding names, places, events, subjects, dates, files, titles, file designation, or other identifying information. D.C. Mun. Regs., tit. 1. § 402.4

We agree with Appellant that the FOIA Request reasonably describes the records sought. It is clear that the request is limited to: (i) emails, (ii) dated between June 3 and June 28, 2006, (iii) sent or received by four (4) easily identifiable individuals. Sufficient detail is included for DOC to easily identify the information suggested by Section 402.4 of the D.C. Municipal Regulations.

Less clear is whether the FOIA Request requires DOC to conduct “an unreasonably burdensome search.” An agency is not required to undertake a search that is so broad as to be unduly burdensome. *Brophy v. U. S. Department of Defense*, 2006 WL 571901 (D.D.C 2006), citing *Nation Magazine v. U.S. Customs Service*, 71 F.3d 885, 890 (D.C. Cir. 2003). DOC relies on *American Federation of Government Employees, Local 2782 v. U.S. Department of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990) to support its position that an agency need not honor a request that requires such a search.

Whether or not a search is unduly burdensome requires a subjective analysis of the facts and circumstances of a particular case. See, for example, *Goland v. CIA*, 607 F.2d 339 at 353 (finding unreasonably burdensome a request for additional responsive records where “if they exist, could be found only through a page-by-page search through 84,000 cubic feet of documents in the [CIA] Records Center”); *American Federation of Government Employees, Local 2782 v. U.S. Department of Commerce*, 907 F.2d 203, 209 (finding unreasonably burdensome a request to locate “every chronological office file and correspondent file, internal and external, for every branch office, staff office [etc.]”); *Public Citizen, Inc. v. U. S. Department of Education*, 292 F. Supp. 2d 1, 6-7 (D.D.C 2003) (finding reasonable a search of 25,000 files for data irregularly kept in the agency’s database when the search was “certain to turn up responsive documents”); *Nation Magazine v. United States Custom Service*, 937 F. Supp.

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39, 42 (D.D.C 1996)(finding reasonable a search for a single memorandum among chronological files that were neither indexed nor cross-indexed).

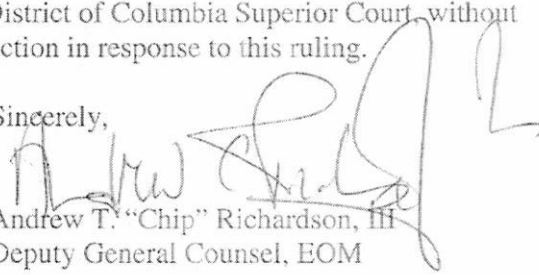
We recognize that some requests for information made pursuant to the DC-FOIA may be so overly broad and far-reaching on their face, that they cannot reasonably be deemed to describe any public record. D.C. Official Code 2001 Ed. § 2-532(c). In such cases, a respondent agency may justifiably refuse to comply with the request unless and until the requestor narrows the search request. This strikes a balance between providing the public full and complete information regarding the affairs of government while allowing the government to devote its valuable time and resources toward serving the public. However, we are not faced with that situation here.

Where, as here, an FOIA Request reasonably describes the records sought, it is the agency's burden to provide sufficient explanation why a search would be unduly burdensome. *Public Citizen*, 292 F. Supp. 2d. at 6. The DOC Response does not sufficiently explain why the requested search would be unduly burdensome or identify any specific burden that it or the Office of the Chief Technology Officer ("OCTO") would have to shoulder to conduct the search.

Therefore, DOC's denial is VACATED and REMANDED to DOC, where it shall, within five (5) days of the date hereof submit such explanation as necessary to constitute sufficient proof that the FOIA Request requires an unreasonably burdensome search. We reserve the right to review such explanation and issue a final determination on its sufficiency. Otherwise,, if DOC chooses not to provide the requested explanation, it shall, within five (5) days of the date hereof deliver to OCTO a copy of the FOIA request with instructions to conduct a search based on the parameters set forth in the FOIA Request. DOC may withhold records, or portions of records, under one or more of the statutory exemptions upon a clear marking or identification of the records (or portions) showing the deletions and an identification of the exemption or exemptions relied upon in making those deletions. DOC may assess fees associated with the retrieval, review, and reproduction of responsive records to the extent provided in the FOIA, and shall notify Appellant in advance of the expected cost.

As the appellant, you are free under the FOIA to commence a civil action against the District of Columbia government at any time in the District of Columbia Superior Court, without awaiting the outcome of DOC's explanation or production in response to this ruling.

Sincerely,


Andrew T. "Chip" Richardson, III
Deputy General Counsel, EOM

cc (by e-mail):

Oluwasegun Obebe

Records, Information & Privacy Officer