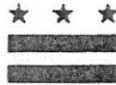


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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

March 6, 2007

BY US MAIL AND E-MAIL

[Redacted]  
Washington, DC 200

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 February 5, 2007, initially received in this office on February 8, 2007, re-submitted by email dated February 12, 2007, and received in this office on February 13, 2007 (the "Appeal"). We accept your Appeal as of that date. The record shows that you delivered a copy of the Appeal directly to the respondent agency, the District of Columbia Public Schools ("DCPS"). DCPS did not respond to the Appeal. You are referred to herein as the "Appellant."

Background

The Appellant's initial DC-FOIA request, dated November 27, 2006 ("FOIA Request"), set forth below, sought from DCPS the following:

"...a detailed account of all civil servants hired at, or promoted to, the G-14 level and above from fiscal 2000 to the present.

[The] request includes, but is not limited to, the name of the employee, the date of hire, the rank at which he/she was hired, the rank which she/he currently holds, the dates of any promotion, annual salaries, any bonuses, the employees' credentials – including resume and references – and the name of the person who approved the hire/promotion/bonus."

DCPS responded to the FOIA Request in a letter dated January 11, 2007 (the "DCPS Denial"), and advised Appellant that they were denying the FOIA Request because "DCPS is unable to process this request due to system limitations." DCPS further advised that they "would be unable to provide Appellant with any certainty the level an employee entered into DCPS and

subsequent promotions/changes that have allowed an employee to arrive at their current grade level in the school system.” However, DCPS did not explain why.

Appellant argues on appeal that (i) the information is important to the public and (ii) that his investigation suggests that the records are maintained by DCPS<sup>1</sup>.

#### 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). In furtherance of that public policy, an 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. *Campbell v. United States Department of Justice*, 164 F. 3d 20 (D.C. Cir. 1998).

DCPS has not yet shown that it made any efforts to search for the requested records. While we agree with DCPS that an agency is not required to create records, at a minimum, an agency is required to search for the requested information within existing agency records. There is no evidence that any search was conducted to support DCPS’s conclusion that it is unable to process the FOIA Request. Therefore, DCPS’s denial is VACATED and REMANDED to DCPS, where it shall make a good faith effort to conduct a search based on the parameters set forth in the FOIA Request. Within ten (10) days of the date hereof, DCPS shall submit to this office and to Appellant the detailed results of that effort. DCPS 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. DCPS may assess fees associated with the retrieval, review, and reproduction of responsive records to the extent provided in the DC-FOIA, and shall notify Appellant in advance of the expected cost.

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<sup>1</sup> Appellant called the District of Columbia Office of Personnel in January and inquired about an employee’s title. Appellant was told that this person was a G-14. Appellant infers from that conversation, that the records that he is requesting are “kept somewhere.”

[REDACTED]  
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As the appellant, you are free under the DC-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 DCPS's response to this ruling.

Sincerely,



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

cc (by e-mail):

[REDACTED]