

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

March 13, 2009

Washington, D.C. 200

Dear

This letter responds to Mr. appeal (the "Appeal") to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. §§ 2-351 *et seq.* ("DC-FOIA"), dated October 26, 2008. We forwarded Appeal to the District of Columbia Office of Tax and Revenue ("OTR"), with a request for a response. OTR responded to the Appeal on December 4, 2008. The foregoing represents the appellate record, upon which we base this decision.

Background

In original FOIA request, submitted on September 8, 2008, he sought the following information relating to "any and all records that relate to the correct amount of [property] tax due" on the property located at in Washington, D.C. He further requested the names of all persons who he alleged participated in causing the tax rate to increase for the property. also asked the OTR the following:

"Kindly advise me who is the General Counsel for the DC Department of Finance and Revenue and for OTR? Are the General Counsels for the DC Department of Finance and Revenue and for OTR members of the DC Bar or any state bar associations? If so, which bar associations?"

On October 17, 2008, OTR responded to request, indicating the reason the property tax rate increased was because the Department of Consumer and Regulatory Affairs ("DCRA") declared the property vacant. Furthermore, OTR stated that the only information that OTR had in its possession that relates to the classification of , was a list of vacant properties submitted by DCRA.

On October 26, 2008, filed an appeal with our office, arguing that OTR had failed to provide him with records explaining why and how his property rate increased and the names of all persons involved in assessing the increased rate. further contended

that the Recorder of Deeds improperly charged him a fee for copies of records he obtained from the office. Finally, [REDACTED] argues that OTR improperly withheld the names and bar memberships of attorneys working in OTR.

### 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 2001 Ed. §2-531. In furtherance of this policy, when searching for documents pursuant to a FOIA request, a public body should make “reasonable” efforts to search for the requested records. *Id.* §2-532(a-2). However, a search is not presumed unreasonable simply because it fails to produce all relevant material. *See Doe v. D.C. Metro Dep’t*, 948 A.2d 1210, 1221 (2008) (citing *Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (1990)). Furthermore, an agency is not required to produce records that they do not maintain in the ordinary course. Agencies are also not obligated to create or search for documents not within their possession or control. *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136 (1980).

#### *1. Did OTR Improperly Withhold Documents Regarding the Newly Assessed Tax Rate for the Property Located at 1344 Wisconsin Avenue, NW?*

OTR informed [REDACTED] that it did not make the decision determining that his property is now considered vacant and therefore subject to an increase in property taxes. OTR notified [REDACTED] that the DCRA made this determination. After making this determination, DCRA forwarded the list of vacant properties to OTR. Consequently, as indicated in OTR’s response to [REDACTED] original request, OTR could not provide him with the documentation used to make the determination regarding his property value because OTR did not make that decision. Therefore, OTR properly notified [REDACTED] that if he sought documents relating to the increase in property taxes, he would have to submit this request directly to DCRA. As an agency is not required to produce records not in its possession in the ordinary course of business, OTR committed no error by not providing these records to [REDACTED]. *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136 (1980).

#### *2. Did the Recorder of Deeds Improperly Charge [REDACTED] for Copying the Records he Requested?*

[REDACTED] also argues that when he visited the Recorder of Deeds to obtain copies of records, his camera was improperly confiscated and he was unfairly charged \$2.25 per page for copying a document. OTR correctly notes that the issue regarding the confiscation of [REDACTED] camera is not an issue governed by FOIA and therefore, will not be considered by this office for appeal purposes. However, the copying fees the Recorder of Deeds charged [REDACTED] is an issue subject to review under FOIA. D.C. Code §42-1218 provides the following:

- (a) Notwithstanding the provisions of §§ 42-1210, 50-1212, and 50-1213, or any other act of Congress, the Mayor of the District of Columbia may, from time to time, increase or decrease the fees authorized to be charged for filing, recording,

and indexing or for making a certified copy of any instrument; for searching records; for taking acknowledgments; for recording plats; for filing affidavits; for filing certificates of incorporation and amendments of certificates; for recording liens, assignments of liens, or releases of liens on motor vehicles or trailers; or for any other service rendered by the Office of the Recorder of Deeds.

(b) The fees for services rendered by the Office of the Recorder of Deeds shall be fixed at such rates, computed on such bases and in such manner, as may, in the judgment of the Mayor, be necessary to defray the approximate cost of operating the Office of the Recorder of Deeds.

(c) Nothing in this section shall be construed as authorizing the Mayor to modify any provision of Chapter 1 of Title 29.

[REDACTED] went to the Recorder of Deeds in an attempt to obtain copies of any liens filed in error against his property. After being informed that none existed, [REDACTED] then requested a copy of a Release of Lien. Upon making this request, the office properly exercised its authority to charge [REDACTED] a fee in the amount of \$2.25 per page for copying the documents he requested. Pursuant to D.C. Code §42-1218, the Recorder of Deeds may charge for a list of specific records and “for any other service rendered by the Office of the Recorder of Deeds.” As such, the Recorder of Deeds committed no error in charging [REDACTED] fee. Further, the ability of the Recorder of Deeds to charge a fee for copying such records in no way implies that the office is exempt from FOIA. In fact, 9 DCMR §309 makes clear that although documents recorded and indexed at the Recorder of Deeds are not subject to FOIA because the records are already made available to the public, certain requests for copies of records made to the Recorder of Deeds are subject to FOIA. Nonetheless, the fact that the Recorder of Deeds is subject to FOIA does not in any way restrict its authority or ability to charge a fee for copying documents.

3. *Is OTR Obligated to Provide [REDACTED] With the Names and Bar Memberships of Attorneys at OTR Who Performed Work Related to His Property?*

[REDACTED] further contends that he seeks information about the names and bar memberships of certain attorneys working in the General Counsel’s Office at OTR. In support of this contention, [REDACTED] cites D.C. Code § 2-536(a)(1), which provides in part:

a) Without limiting the meaning of other sections of this subchapter, the following categories of information are specifically made public information, and do not require a written request for information:

(1) The names, salaries, title, and dates of employment of all employees and officers of a public body;

...

In response, OTR states that it refused to provide [REDACTED] with this information pursuant to DC Code § 2-534(2)(a)(2), which exempts "information of a personal nature when public disclosure thereof would constitute a clear and unwarranted invasion of personal privacy."

A person has the right to inspect or copy any public record of a public body unless otherwise exempted by statute or regulation. D.C. Code §2-532(a). A "public record" is defined as including, "all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics prepared, owned, used in the possession of, or retained by a public body" and also consists of "information stored in an electronic format." D.C. Code §2-502. In this Appeal, [REDACTED] is not seeking agency records but is instead seeking answers to specific questions. For example, he seeks to know the names of the employees at OTR who performed work related to his property and the bar memberships of the attorneys who worked on his case. However, the FOIA statute is not a tool that members of the public may use to obtain answers to questions; the FOIA statute exists to assist the public in obtaining access to the public records of a particular agency. Therefore, although DC Code § 2-536(a)(1) requires OTR to provide all of the names, titles and salaries of employees working at OTR; the agency is not required to respond to [REDACTED] specific questions pertaining to the names and bar memberships of attorneys who worked on his case. As such, we find that OTR was not in error for refusing to provide this information. Furthermore, since it has been determined that this portion of [REDACTED] Appeal does not properly fall within the subject matter of a FOIA request, it is unnecessary to address whether the information requested is exempt under DC Code § 2-534(2)(a)(2).

For these reasons, this matter is REMANDED to OTR to provide [REDACTED] with a list of employees working at OTR within 5 (five) business days of the date of this decision. The remainder of the Appeal is DISMISSED.

Sincerely,



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