

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-023**

January 28, 2020

VIA ELECTRONIC MAIL

Mr. Paul Mulholland

RE: FOIA Appeal 2020-023

Dear Mr. Mulholland:

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”). In your appeal, you challenge the response you received from the Department of Corrections (“DOC”) for documents relating to “solitary confinement” at DOC.

Background

On October 2, 2019, you submitted a FOIA request to DOC for records relating to “solitary confinement” at the DOC. You asked for internal procedures on the use of solitary confinement, including any legitimate reasons for placement and appropriate duration, any training materials given to employees on solitary confinement, records of inmates kept in solitary confinement, reasons for confinement and duration of their confinement, visuals and/or description of cells, mental health records for those kept in solitary, defense counsel complaints regarding clients kept in solitary confinement, laws DOC believes that apply to the regulation of solitary confinement, internal affairs investigations on the use of solitary confinement, court orders demanding a change in confinement of an inmate kept in solitary, charges against those kept in solitary, DOC legal opinions on the status and proper uses of solitary confinement.

On or about November 4, 2019, DOC denied your request on the basis that DOC does not use “solitary confinement.” In your appeal, you asked that DOC conduct its search using the term “segregated housing” and not “solitary confinement.” On November 18, 2019, DOC responded to your appeal indicating that had conducted a search based on the new term “segregated housing.” DOC also attached a separate letter to you, dated November 18, identifying the documents that had been located and produced to you and documents that were withheld. In addition, DOC indicated that inmate records would be provided once you identified the specific inmates whose records were being requested and an authorization for release of records signed by each inmate. DOC also asked that the appeal be dismissed based on a supplemental response to you. On December 6, 2019, DOC provided an additional supplemental response to this Office. DOC attached its December 5, 2019 letter sent to you providing more responses to your remaining requests.¹

¹ Copies of DOC’s November 18, 2019 response to your appeal and separate November 18

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.” 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. 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).

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).

DOC has requested that we dismiss the appeal because the appeal was limited to changing the search for documents relating to “segregated housing” from “solitary confinement.”² DOC agreed to the new search term, essentially agreeing to conduct a search for records responsive to a new FOIA request. DOC attached to its November 18, 2019 response to your appeal a separate letter to you, also dated November 18, 2019, outlining the additional items being produced and those items that were withheld. In addition, DOC further supplemented its response to your appeal on December 6, 2019. Along with that response, DOC also provided a letter sent to you, dated December 5, 2019, providing the final responses to the remaining items in your FOIA request. We note that no appeal has been filed in response to DOC’s supplemental document production using the term “segregated housing.” Therefore, we hereby dismiss the instant appeal as moot. You may file a new appeal if you wish to challenge the sufficiency of DOC’s response to your FOIA request, as modified by the request articulated in filing this appeal.

Conclusion

supplemental response addressed to you, along with DOC’s December 6, 2019 supplemental response to your appeal and separate December 5, 2019 letter to you providing a final response to your requests are all attached to this decision.

² Your appeal stated the following: I was told by DOC that solitary confinement is not used by DOC, and instead they use "segregated housing." All the Judges and defense attorneys know that solitary is used, and segregated housing appears to be the same thing. To the extent that segregated housing is not a mere euphemism for solitary confinement, "segregated housing" should have been swapped in for "solitary confinement" in my last FOIA request. I would like the FOIA request processed for segregated housing instead of solitary confinement.

This constitutes the final decision of this Office with respect to this appeal. 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: Obebe Segun, FOIA Officer
DOC (via email)