

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-024**

January 22, 2020

VIA ELECTRONIC MAIL

Mr. Rik Dupont

RE: FOIA Appeal 2020-024

Dear Mr. Dupont:

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”), pertaining to a request for public records which you submitted to the Department of Motor Vehicles (“DMV”).

On October 23, 2019, you submitted the following request for public records to DMV:

I would like to request information regarding the DC Department of Transportation. For the year of 2016 alone, Would like to request the total amount transactions with each individual fee associated with the DMV, and how much revenue was generated from it. For example, “there were X number of duplicate learners permits, and \$____ amount of money was earned through fees because of it.” Linked below is a link to a page on the DC DMV website which links to 9 different types of DMV fees. For each of the 9 links, there is a chart listing all the fees associated with that category. I am requesting the number of transactions for each fee and how much revenue generated from each fee separately in the year of 2016 (as I have modeled above). This also includes the fees labeled as “free”. This is about 120 fees or so in total. Thank you.

DMV responded to your request on October 30, 2019, denying your request and advising you that your request would require the creation of a new document or report, and that this is not required under DC FOIA. On October 31, 2019, you submitted what you characterized as a revised request “to better align the request with FOIA standards” and which “did not violate” the law as indicated by DMV in the agency’s October 30, 2019 denial letter. In the instant appeal, you assert that DMV has failed to respond to your revised request.

This Office notified DMV of your appeal, and the agency responded on November 7, 2019.¹ In its response, DMV asserted that FOIAXpress, the portal in which you submitted your request for

¹ A copy of DMV’s response to your appeal is attached to this decision.

records, flagged your October 31, 2019 request as a duplicate and presented DMV with the option of either deleting the request or closing the request – DMV choose the latter after concluding that there were no substantive differences between the two requests. DMV also reaffirmed that it did not possess an existing report responsive to your request.

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. *See 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. *See Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989). While construction of the federal statute may be persuasive where there are similarities between the federal FOIA and DC FOIA, it is not when there are substantive differences between the two statutes.

The primary issue raised by your appeal is whether DMV is obligated to create a record for you that it does not already maintain. An adequate search does not require FOIA officers to act as personal researchers on behalf of requesters. *See, e.g., Bloeser v. DOJ*, 811 F. Supp. 2d 316, 321 (D.D.C. 2011) (“FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters...”); *Frank v. DOJ*, 941 F. Supp. 4, 5 (D.D.C. 1996) (an agency is not required to “dig out all the information that might exist, in whatever form or place it might be found, and to create a document that answers plaintiff’s questions”).

In the instant matter, DMV has represented that it does not possess the records that you seek – namely information from the Department of Transportation showing the amounts of certain transactions with DMV. As a result, your request more closely resembles a request for DMV to create a compilation of the named transactions, which it is not required to do under DC FOIA. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency “has no duty either to answer questions unrelated to document requests or to create documents.”). “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

Accordingly we agree with DMV that the agency is not obligated create records for you. As we have no reason to question DMV’s representation that it does not possess any record responsive to your request, we hereby dismiss your appeal.

Conclusion

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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Ariel W. Reed, Assistant General Counsel, DMV (via email)