

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-051**

January 22, 2020

VIA ELECTRONIC MAIL

Ms. Anne Grelier

RE: FOIA Appeal 2020-051

Dear Ms. Grelier:

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 assert that the Department of Consumer and Regulatory Affairs (“DCRA”) failed to properly respond to your FOIA request for a copy of all inspection reports during a specified time period at a condominium building on 14th Street, N.W.

Background

You submitted a FOIA request to DCRA’s FOIA Officer for any inspection records for a condominium building on 14th Street, N.W. during a specified time period. On December 13, 2019, DCRA responded to your FOIA request and provided the responsive documents that had been located. On December 15, 2019, you filed this appeal, indicating that DCRA’s response was incomplete because you had only received one Stop Work Order (“SWO”) and the SWO was for the unit in which you lived. On January 15, 2020, DCRA responded to your appeal describing the initial search efforts and the additional search that was conducted in response to your appeal. DCRA indicated that additional documents had been located and provided to you. In addition, one additional document was being sent to you. Finally, DCRA asserted that no responsive documents had been withheld.¹

Discussion

It is the public policy of the District of Columbia 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 § 2-531. In aid of that policy, the DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the

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

federal statute are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of the Search

In this appeal, you have challenged the sufficiency of the search because the only inspection record submitted to you related to your own condominium unit even though there have been inspections in other parts of your condominium building.

In determining whether an agency conducted an adequate search in response to a records request, the test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. See *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search:

‘the 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.’ (*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)) . . . The court applies a ‘reasonableness’ test to determine the ‘adequacy’ of a search methodology, (*Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983))

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. See *In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In this instance, DCRA's appeal response suggests that the initial search may have been incomplete. In the appeal response, DCRA describes how the first search was conducted and the result of that initial search. The appeal response also acknowledges that after an additional search, more records were located. The additional search produced 54 photographs, an additional SWO and inspection report. Those records were provided to you, and the agency represents that once that production was completed, it had no additional responsive records which had not been produced to you. DCRA also searched the agency's Acela database which houses extensive agency records, including the inspection reports. And, the FOIA Officer has

verified that she coordinated a search at various offices that also could have had some of the inspection records.

However, there is no indication that the agency did an OCTO email search using the building's address. Moreover, it is not clear from DCRA's appeal response whether it is likely that an inspection report could have been sent or discussed in an email but for some reason was not found in hard copy or in the Acela database. We therefore remand this matter to DCRA with the directive to conduct an OCTO search for responsive emails expeditiously, if no such search was previously conducted. The search should use the address of the building or any other search term that might be reasonably linked to identify responsive inspection reports. DCRA should promptly produce to you any responsive emails which are identified through such search – or it should confirm to you that such search was previously conducted.s

This constitutes the final decision of this Office with regard to your 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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Genet Amare
FOIA Officer
DCRA (via email)