

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-058**

January 15, 2020

VIA ELECTRONIC MAIL

Mr. Daniel Adler

RE: FOIA Appeal 2020-058

Dear Mr. Adler:

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”), challenging the failure of the District of Columbia Public Schools (“DCPS”) to properly respond to your FOIA request for “teacher and staff survey results disaggregated by school including Question-level Survey Results, and teacher survey and satisfaction scales (Date Range for Record Search: From 1/01/2017 to 11/25/2019).”

On December 19, 2019, DCPS responded to your FOIA request. DCPS produced some of the data information that had been requested. DCPS also indicated that it did not have school-level aggregate results for SY 16-17 in its possession. You appealed that decision on December 20, 2019 contending that DCPS did not provide you with all of the requested data. On December 24, 2019, DCPS responded to your appeal indicating that no documents or data had been withheld. On January 6, 2019, DCPS supplemented its response to the appeal confirming that DCPS did not have school-level aggregate SY 16-17 results for the individual questions in your FOIA request.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 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

¹ The responses from DCPS to your appeal are attached to this decision.

In this matter, your appeal does not specifically challenge the adequacy of the search. However, we interpret your FOIA appeal as indirectly challenging the thoroughness of the search in suggesting that such data should exist.

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, DCPS provided documents to you and affirmatively states that the agency does not have school-level aggregate results for the SY16-17 school year in its possession. DCPS states that a FOIA paralegal contacted the DCPS Office of Data and Strategy and was informed that all responsive information had been provided. Further, in the supplemental appeal response, the FOIA Officer indicates that she confirmed with relevant DCPS staff that the information provided was all of the existing responsive data in the agency's possession. According to the FOIA Officer, this information was provided to you in an email on January 3, 2020.

Based on the foregoing, we conclude that notwithstanding a diligent search, DCPS was unable to locate the additional data that you sought in your FOIA request. Therefore, we dismiss your appeal, as we have no reason to believe that the agency possesses additional responsive records. This is the final decision of this Office in this matter. If you are dissatisfied with this decision, you

may commence a civil action against the District of Columbia in the Superior Court of the District of Columbia in accordance with D.C. Official Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: Eboni J. Govan, Attorney Advisor
DCPS (via email)