

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2020-066**

January 28, 2020

VIA ELECTRONIC MAIL

Mrs. Alexjandra Ezeta

RE: FOIA Appeal 2020-066

Dear Mrs. Ezeta:

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 Metropolitan Police Department (“MPD”) improperly withheld records you requested under DC FOIA.

Background

You requested the police report on a domestic violence incident in 2008 involving a family member on a specific date and at a specific location. MPD did not respond to your request. You then filed this appeal challenging MPD’s failure to respond to your request.

On January 23, 2020, MPD provided its response to your appeal.<sup>1</sup> In its response, MPD indicates that it did not locate any responsive records. MPD also notes that you corrected the date of the incident (December 21, 2008), indicated that your spouse was a diplomat, MPD responded to the call first and when the U.S. Secret Service arrived, the MPD officers left the scene. Based on the additional information that you provided, MPD states that no police report may have been taken by MPD because your spouse was a diplomat enjoying diplomatic immunity and upon the arrival of the Secret Service to the location of the incident, the MPD officer left the scene. In addition, MPD states that even if a police report had been generated (the PD-251), the retention period for that record is ten year. The police report, if it ever existed, could have been purged some time in December 2018.

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

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<sup>1</sup> A copy of MPD’s response to your appeal is attached.

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. *See 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. *See 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 challenged the absence of any response from MPD to your request for public records. Therefore, you would have not had any basis for challenging the adequacy of the search. However, in its response, MPD does describe the search that was aided by the additional information you provided (i.e., your husband was a diplomat and that the Secret Service arrived at the incident and MPD officers then left the scene). Therefore, it is appropriate for us to address this issue now since MPD has indicated that no responsive documents have been located.

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, MPD noted that its efforts to locate a police report of the incident in 2008 included a search of the MPD Records Management System using your last name, the name of your family member, your home address that was obtained from a lost property report by your family member and the date of the incident. That search did not locate any responsive records. In addition, MPD also states that there are several reasons which may explain why no police report of the incident in question could be located. First, MPD suggests that it is possible that no report was generated by the MPD officers who arrived at the scene because your spouse was a diplomat and entitled to diplomatic immunity. Second, even if a police report had been created by MPD, the retention period for that record is ten years; therefore, even if a report was created at the time, it may have been purged in accordance with the applicable document retention policy.

Based on the foregoing, we conclude that MPD conducted an adequate search in trying to locate a police report from an incident in 2008 that was sought in your FOIA request.

### Conclusion

While MPD did not timely respond to your initial FOIA request, we are persuaded by MPD's representation that after an adequate search, no responsive record was located. Therefore, we dismiss your appeal. This constitutes the final decision of this Office in connection with 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 the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Teresa Quon Hyden, Assistant General Counsel  
MPD (via email)