

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2020-074**

February 4, 2020

VIA ELECTRONIC MAIL

Ms. Kimm Massey

RE: FOIA Appeal 2020-074

Dear Ms. Massey:

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 Executive Office of the Mayor (“EOM”) to properly respond to your FOIA request.

Background

On December 17, 2019, you submitted a public records request to this Office for video footage from the camera located on Wisconsin Avenue for a stated date and time.<sup>1</sup> On December 26, 2019, the MOLC’s FOIA Officer notified you that a search was conducted and that there were no responsive documents at the EOM. The MOLC’s FOIA Officer indicated that based on the nature of the request, the records may reside with the District Department of Transportation (“DDOT”). You then forwarded the request to DDOT, which informed you that it had no responsive records. You were then directed by DDOT to contact the District of Columbia Homeland Security and Emergency Management Agency (“HSEMA”) and the Metropolitan Police Department (“MPD”).

On January 16, 2020, you filed this appeal. In your appeal, you indicated that you sent the FOIA request to the MOLC in order for the MOLC to direct the request to the appropriate District agency. You challenge the MOLC FOIA Officer’s decision to close out your FOIA request and on appeal, you seek the MOLC’s assistance in obtaining the video footage which you seek.

On January 24, 2020, we received a copy of the MOLC FOIA Officer’s response to your appeal.<sup>2</sup> In the appeal response, the MOLC FOIA Officer indicates that your request was interpreted as one seeking public records in the files of the MOLC or its personnel. After an unsuccessful search for the video, the MOLC FOIA Officer informed you that the requested video footage could not be located and that it was possible that DDOT had responsive records.

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<sup>1</sup> For the avoidance of conflicts in reviewing administrative appeals under DC FOIA, an attorney in the Office of the General Counsel to the Executive Office of the Mayor serves as the MOLC’s FOIA Officer.

<sup>2</sup> A copy of the MOLC FOIA Officer’s response to your appeal is attached to this decision.

## 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. 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).

As indicated previously, your appeal challenged the MOLC FOIA Officer’s conclusion that the FOIA request was to get records directly from the MOLC. Instead, you only wanted the MOLC to forward the request to the agency which had the requested records. As such, you are not asserting that the search for records at the MOLC was inadequate.

It is the burden of the requestor to file the request with the appropriate agency. *See Bigwoody v. United States Dept’t of Defense*, 132 F. Supp. 3d. 124, 134 (DDC 2015) (“In order to obtain information through FOIA, a requestor must file a request for production with the appropriate agency.”). An agency is not required to conduct a search of records outside of its possession or control. *See Hussain v. DHS*, 674 F.Supp. 2d. 260, 265-266 (D.D.C. 2009) (finding agency’s search adequate because portion of the records sought were maintained by another agency). Moreover, an agency is not required to determine the appropriate agency having custody of any desired records. Although not obligated to do so, in this matter the MOLC’s FOIA Officer made a good faith suggestion to you that it was *possible* that responsive documents may reside at DDOT. It is not the MOLC FOIA Officer’s responsibility to ensure that any subsequent requests are made with appropriate agencies that may have custody of the requested records.

## Conclusion

Based on the foregoing, we dismiss your appeal. You are free to present your public records request to any District agency which you believe may have responsive records and you may submit a new appeal to this Office in the event that you believe any such agency has failed to respond to such request as required by DC FOIA. This constitutes the final decision of this Office with respect 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: Elizabeth A. Cavendish, General Counsel  
EOM (via email)

Grant Tanenbaum, FOIA Officer