

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-079**

November 5, 2020

VIA ELECTRONIC MAIL

Mr. Todd A. Gluckman

RE: FOIA Appeal 2020-079

Dear Mr. Gluckman:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Executive Office of the Mayor (“EOM”) failed to properly respond to your FOIA request in 2020-FOIA-00456/FOIA Appeal 2020-079.

Background

On October 18, 2019, you submitted a FOIA request to the Executive Office of the Mayor (“EOM”) for records relating to the Office of the State Superintendent of Education (“OSSE”) and the District of Columbia Public Schools (“DCPS”). Specifically, you requested copies of the agencies’ actual budget requests for fiscal year 2019, including “Form B” and any similar documentation describing in detail the agencies’ budget needs or requests for fiscal year 2019, and information identifying corresponding totals from the final approved budget. You also stated that you were specifically interested in expenses and budgetary items related to special education services relevant to the *DL* case. This includes, for OSSE, funding for special education oversight, policy development and compliance issues impacting 3-5 year-olds, data systems, the provision of screenings, evaluations, eligibility determinations, and the provision of specialized instruction and related services, including special education. For DCPS, this includes those same matters, as they relate to Early Stages, the Central Office, and individual schools. Finally, you indicated that you do not object to the production being narrowed accordingly. When you did not get a response from EOM, you submitted this appeal directed to the Mayor’s Office of Legal Counsel (“MOLC”), EOM, OSSE and DCPS, even though the specific FOIA request in 2020-FOIA-00456 was directed only to the EOM.

On February 7, 2020, EOM submitted its response to your appeal.¹ EOM disputes your claim that you never received a response from EOM. According to EOM, on December 3, 2019, EOM’s FOIA Officer informed you by email through FOIAXpress that a search was conducted

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

and no responsive records had been located. EOM also informed you that responsive records could reside with OSSE and DCPS.

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. 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).

In the subject line of your January 22, 2020, appeal letter, you indicate that your FOIA Appeal was filed in 2020-FOIA 00456, the FOIA request directed only to the EOM. We also note that you submitted a separate FOIA request to OSSE in 2020-FOIA-00457. And, you acknowledge in your January 22, 2020, letter that you never sent a FOIA request to DCPS. Therefore, the only FOIA request before this Office on appeal is the request directed to EOM in 2020-FOIA-00456. Since EOM has indicated that you did get a response that no responsive records had been located, we dismiss your appeal as moot. However, you may file a separate new appeal after you have received the supplemental response from OSSE in 2020-FOIA 00457.²

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 D.C. Code § 2-537.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Elizabeth Cavendish, General Counsel
EOM (via email)

Mona Patel, FOIA Office, OSSE (via email)

Eboni Govan, Attorney Advisor/FOIA Officer, DCPS (via email)

² We note that OSSE has already provided you the Mayor’s budget submissions to the City Council. However, it is premature for us to discuss whether you are entitled to the proposed budgets submitted by OSSE to the Mayor, since you have not filed an appeal in 2020-FOIA-00457.