

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-123**

September 3, 2020

VIA ELECTRONIC MAIL

Mr. Joshua Partlow

RE: FOIA Appeal 2020-123

Dear Mr. Partlow:

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 Metropolitan Police Department (“MPD”) did not adequately search for records responsive to your request.

Background

On December 16, 2019, you requested all invoices, receipts, or other documents describing payment by MPD to the Trump International Hotel in Washington, D.C. for the time period between January 1, 2017 and December 16, 2019. On February 19, 2020, MPD responded to your request. According to MPD, records responsive to your request could not be located because the records you were seeking had passed their retention schedule and had been purged. You then filed this appeal challenging the adequacy of MPD’s search and seeking a remand to MPD to conduct an additional search and to describe the methods used and offices and information systems searched.

On February 27, 2020, MPD provided its response to your appeal.¹ In its response, MPD acknowledges that it mistakenly informed you that the records you were seeking had been purged when that was not the case. MPD further explains that the Accounts Payable Division of the Office of Finance and Treasury within the Office of the Chief Financial Officer, which is responsible for payment of debts incurred by the District government, conducted a search of its records system using the search term “Trump International,” which yielded no responsive documents.

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

¹ A copy of MPD’s response to your appeal is attached.

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” D.C. Code § 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 challenge the adequacy of MPD’s search for responsive records. In determining whether an agency conducted an adequate search in response to a records request, the test is not whether documents might conceivably exist, but whether the agency’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 coordinated with the Office of the Chief Financial Officer (“OCFO”), the agency that is responsible for paying debts incurred by the District government. OCFO, through the Accounts Payable Division of its Office of Finance and Treasury, searched its records system for the term “Trump International.” That search did not locate any responsive records. Based on the foregoing, we believe that MPD reasonably identified the database where any requested

invoices, receipts, or similar documents were likely to be found and arranged for a search of that database using an appropriately broad search term that could reasonably have been expected to produce responsive documents.

Conclusion

While MPD did not accurately respond to your initial DC FOIA request, we are persuaded by MPD's representation that after a diligent search, no responsive record was located. Therefore, we deny 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)