

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-125**

August 10, 2020

VIA ELECTRONIC MAIL

Mr. Michael Ayele

RE: FOIA Appeal 2020-125

Dear Mr. Ayele:

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”), challenging the failure of the Office of Open Government to respond to your FOIA request.

You submitted a DC FOIA request to the agency in which you described a background check that was performed by a Missouri state agency. You explained that you previously requested records from the Missouri state agency and received a response. You posed several questions to the Office of Open Government, including asking the agency to join you “in moving to call upon” certain records that the Missouri state agency failed to produce, including “public employment contract and the collective bargaining agreement” you signed with the Missouri state agency. In addition to those records, you asked that the agency join you “in moving to call upon” such records as “all [affirmative action] plans which were submitted to the District of Columbia (Office of Human Rights)” and “the content of the arrest reports” for a specified date. Your DC FOIA request also posed a number of other questions to the Office of Open Government that did not reference records.

The Office of Open Government denied your request for records. On February 25, 2020, you filed an appeal with this Office requesting that we direct the Office of Open Government to produce requested records and answer the questions you submitted in your request. On March 2, 2020, the Office of Open Government responded to your appeal and stated that it conducted an electronic search of agency files and determined that it did not maintain records responsive to your request.¹ With regard to the questions you posed, the agency rightfully noted that DC FOIA law imposes no obligation on district agencies to answer questions unrelated to document requests. *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985).

The DC FOIA requires that requests describe the records sought with sufficient detail to allow an agency employee familiar with the subject area of the request to locate the records within a reasonable amount of time. More specifically, 1 DCMR § 402.4 states that:

¹ A copy of the Office of Open Government’s response to your appeal is attached to this decision.

A request shall reasonably describe the desired record(s). Where possible, the specific information regarding names, places, events, subjects, dates, files, titles, file designation or other identifying information shall be supplied.

In addition, the law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985); *see also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

Your appeal does not take issue with the search conducted by the Office of Open Government in response to your initial DC FOIA request. Instead, it contains a new series of questions on various topics. Based on the foregoing, we conclude that the Office of Open Government properly responded to your DC FOIA request and we hereby deny your appeal.

This constitutes the final decision of this Office. 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. Code § 2-537.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Johnnie Barton, General Counsel
Office of Open Government
Board of Ethics and Government Accountability (via email)