

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2020-145**

July 8, 2020

VIA ELECTRONIC MAIL

Mr. Corey Holman

RE: FOIA Appeal 2020-145

Dear Mr. Holman:

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 denial of your DC FOIA request by the Department of Motor Vehicles (“DMV”).

Background

On February 26, 2020, you submitted a DC FOIA request to the DMV, asking that the agency produce a list of all residential parking permits issued by the agency in 2018 and 2019, including the address of the registration and the residential parking permit zone number for each permit. The DMV responded to your request on March 11, 2020, and stated that it did not have records responsive to your request. Further, the Agency stated that your request would require the unauthorized release of personal information in violation of the Driver Privacy Protection Act (DPPA), codified at 18 U.S.C. 2721, and its D.C. equivalent statute, D.C. Code § 50-1401.01b.

You then filed an appeal with this Office, challenging the agency’s denial. You argued that the requested records did not fall under the DPPA. You also stated that your DC FOIA request did not seek any personal information, only addresses associated with parking permits. On March 18, 2020, the DMV responded to your appeal<sup>1</sup> and reiterated that the agency did not have any records responsive to your request and that it was not obligated under the DC FOIA to create records. The agency also argued that the DPPA prohibited the disclosure of DMV customer addresses. D.C. Code § 50-1401(b)(3)(A).

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. 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. Code § 2-532(a). The right created under DC FOIA to inspect public records is subject to

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<sup>1</sup> A copy of the DMV’s response to your appeal is attached to this decision.

various exemptions that may form the basis for denial of a request. *See* D.C. Code § 2-534. Under DC FOIA, an agency is required to disclose materials if they are “retained by a public body.” D.C. Code § 2-502(18).

### *Adequacy of Search*

Both the DMV’s initial March 18, 2020, response to your DC FOIA request and its subsequent communication with this Office on March 19, 2020, state that the agency does not maintain a report containing the information you requested. The agency has correctly noted that DC FOIA imposes no obligation on district agencies to create records. *Zemansky v. United States Env’tl. Prot. Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (“has no duty either to answer questions unrelated to document requests or to create documents”); *LaRoche v. SEC*, 289 F. App’x 231 (9th Cir. 2008) (affirming summary judgment in favor of the agency where the records sought were not readily reproducible in the searchable electronic format requested); *Krohn v. D.O.J.*, 628 F.2d 195 (D.C. Cir. 1980) (holding that an agency could not be compelled to transcribe a reporter’s notes in order to produce requested data, information, and statistics). However, the DMV’s March 18, 2020, response to your appeal suggests that the agency does in fact maintain a database containing the addresses of all DC residential parking permit recipients and residential parking permit zone numbers. If this is so, extraction of that information from the database would not amount to the “creation” of a record. *Schladetsch v. HUD*, No. 99-0175, 2000 U.S. Dist. LEXIS 22895 (D.D.C. Apr. 4, 2000) (holding that, when an agency “possesses in its databases the discrete pieces of information [sought by a requester], extracting and compiling that data does not amount to the creation of a new record.”).

### *Exemption 6*

Exemption 6 applies to “information specifically exempted from disclosure by statute . . .” D.C. Code § 2-534(a)(6). The statute must either require that the subject matter “be withheld from the public in such a manner as to leave no discretion on the issue” or “establish[ ] particular criteria for withholding or refer[ ] to particular types of matters to be withheld.” *Id.*

D.C. Code § 50-1401.01b, the statute cited by the DMV, prohibits the agency from “knowingly disclos[ing] or otherwise mak[ing] available personal information about an individual obtained in connection with a motor vehicle record.” D.C. Code § 50-1401.01b. The statute recognizes addresses as “personal information.” D.C. Code § 50-1401.01b(a)(3)(A) (“Personal information shall include an individual’s . . . address . . .”). Further, it defines “motor vehicle record,” as “any record that pertains to a motor vehicle operator’s application, permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Motor Vehicles.” D.C. Code § 50-1401.01(a)(2). You argue on appeal that resident parking permits are not regulated by this statute. The DMV argues in opposition that residential parking permits “pertain to” motor vehicle registration, as a customer cannot obtain a permit without registering a vehicle with the DMV or obtaining reciprocity privileges from the DMV. *See* 18 DCMR § 244.10. We find the agency’s argument to be more persuasive on this question.

However, the DMV may not broadly deny every single request for personal information. The

statute simply does not allow that. Instead, D.C. Code § 50-1401.01b lists several circumstances under which the information may be disclosed. D.C. Code § 50-1401.01b(b). Most pertinent to the present discussion is the statute's approval of the release of personal information to a person showing sufficient written proof that the requested information will be used "in research activities and for use in producing statistical reports; so long as the personal information is not published, re-disclosed, or used to contact individuals." D.C. Code § 50-1401.01b(b)(5). The statute gives the agency the right to require documentation to support a request for personal information, as well as "the sole discretion to determine whether the documentation provided is sufficient to support the request." D.C. Code § 50-1401.01b(d)(4).

Here, the DMV would be within its full rights to deny a request for the addresses of residential parking permit under the authority of D.C. Code § 50-1401.01b. However, the agency's response your appeal incorrectly interprets both that statute and the DC FOIA's adequate search requirement. For these reasons, we remand this appeal to the DMV in order for the agency to reconsider whether it conducted an adequate search of its databases, as required by the DC FOIA, and whether it will withhold personal information pursuant to D.C. Code § 50-1401.01b.

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: Ariel Reed, Assistant General Counsel  
DMV (via email)