

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2020-149**

September 2, 2020

VIA ELECTRONIC MAIL

Ms. Heather Davis

RE: FOIA Appeal 2020-149

Dear Ms. Davis:

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 reiterate your request to the Office of Unified Communications (“OUC”) for 911 phone call recordings and photos of a particular incident involving a motor vehicle.

Background

On March 17, 2020, you submitted a request to OUC for the following records: “DC Report # provided 20023657. Looking for a 911 call recording or any photos taken for a vehicle collision or hit while parked incident involving a 2011 Ford Focus VIN 1FAHP3FN1BW157304.” In response, OUC searched for 911 call records involving the information you provided and found no calls. OUC thus denied your request.

You then submitted this appeal, in which you did not argue that OUC had erred, but you provided additional information to aid with a search for responsive records. In particular, on appeal, you provided OUC with more detail, including the address location, the vehicle owner, and the vehicle owner’s phone number. OUC conducted a second search using the more detailed information you provided on appeal but again found no 911 call records matching the incident. In its response to your appeal, OUC explains that (a) it could locate no responsive 911 call recordings after searching its records system, and (b) it does not maintain photographs of incident scenes.<sup>1</sup> OUC suggested that the Metropolitan Police Department would be the proper agency to direct your request with respect to any photographs you are seeking.

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. Official Code § 2-531. In aid of that

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<sup>1</sup> A copy of OUC’s response to your appeal and accompanying declaration are attached.

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).

### *Adequacy of Search*

Because you appeal from a decision by OUC in which the agency determined it had no records responsive to your request, we construe your appeal as challenging the adequacy of the agency’s search. In determining whether an agency conducted an adequate search in response to a records request, the test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *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.*

Here, OUC’s FOIA Officer affirmed that she twice searched OUC’s database of 911 phone call recordings based on the information you provided and that neither search yielded responsive records. In addition, as OUC explained, that agency does not maintain photographs of incident scenes. As a result, OUC necessarily would not have records responsive to your request for photos

Conclusion

Based on the foregoing, we affirm OUC's denial of your request based on its determination that it conducted an appropriate search and that no responsive records could be located. 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 government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Jared Siegel  
Assistant General Counsel  
OUC (via email)