

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-159**

February 2, 2022

VIA ELECTRONIC MAIL

Mr. Michael Ayele

RE: FOIA Appeal 2020-159

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 denial of your DC FOIA request by the Office of Human Rights (“OHR”).

On March 18, 2020, you submitted a DC FOIA request to OHR which provided a lengthy narrative discussing various topics and asking a series of questions. OHR denied your request on the basis that the request sought responses to questions and not records. On March 23, 2020, you appealed this denial and requested, for the first time, records related to an arrest at Georgetown University. On January 15, 2021, OHR responded to your appeal and stated that the deadline for OHR to respond had not lapsed prior to its filing and therefore lacked the procedural basis for consideration by this Office.¹ OHR further stated that even if the appeal were ripe, the underlying request, consisting of questions regarding a private university, was frivolous.

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 the government and the official acts of those who represent them as public officials and employees.” In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by the public body.” D.C. Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A. 2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

¹ A copy of the response from OHR to your appeal is attached to this decision.

Premature Appeal

Under D.C. Official Code § 2-532, the District of Columbia typically has fifteen (15) business days, subject to the possibility of a ten (10) business day extension, to respond to your public record request as of the date of receipt.

Since you filed your appeal on March 23, 2020, five days after submitting your request to OHR, OHR was still within its statutorily permitted period to provide responsive documents.

No Right to Personal Services

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:

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, under FOIA, an agency “has no duty either to answer questions unrelated to document requests or to create documents.” *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985). 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 initial FOIA request consisted of a factual narrative of various topics and a series of questions. OHR properly responded by denying the request.

CONCLUSION

Based on the foregoing, we affirm OHR’s decision and dismiss 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 government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Charles Abbott, Attorney Advisor
OHR (via email)