

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-166**

August 26, 2020

VIA ELECTRONIC MAIL

Mr. Michael Ayele

RE: FOIA Appeal 2020-166

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 Police Complaints ("OPC").

You submitted a DC FOIA request to OPC which provided a lengthy narrative discussing various topics and asking a series of questions. OPC denied your request on the basis that the questions posed did not describe records. You appealed this denial. On April 21, 2020, OPC responded to your appeal and explained that a diligent review of your request did not reveal any discernible description of records that would possibly be within OPC's control.

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).

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. OPC properly responded by denying the request.

CONCLUSION

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

Respectfully,

Mayor’s Office of Legal Counsel

cc: Alicia J. Yass, Legal Counsel
OPC (via email)