

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-180**

November 13, 2020

VIA ELECTRONIC MAIL

Jamie Smith

RE: FOIA Appeal 2020-180

Dear Ms. Smith:

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 District of Columbia Public Schools’ (DCPS) response to your FOIA request.¹

You requested that DCPS produce to you any all emails addressed to and from specified individuals regarding handicapped parking and other topics. On April 9, 2020, DCPS informed you that the agency conducted a search for records responsive to your request, but that the search did not yield any results. You then submitted an appeal to this Office on that date, asserting that a particular DCPS employee retained records responsive to your request.

DCPS responded to your appeal on April 27, 2020. In its response, the agency stated that it contacted you to discuss the scope of the search, conducted another search, and received results from this search. At the time, the agency argued that your appeal was premature because the search results were still under review.

On May 11, 2020, DCPS submitted a supplemental response to your FOIA request. The agency provided you with responsive records and withheld others pursuant to the personal-privacy and deliberative-process privilege exemptions to the DC FOIA. *See* D.C. Code § 2-534(e); D.C. Code § 2-534(a)(2).

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.....”

¹ Copies of DCPS’s April 27 and May 11, 2020, responses to your FOIA request are attached to this letter.

D.C. Code § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Code § 2-534. Under the 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 the Search

The issue you raise in your appeal is whether DCPS conducted an adequate search for records. Generally, the DC FOIA only requires that a search be reasonably calculated to produce relevant documents. *See Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Your appeal references a purported conversation in which a DCPS employee referred to potentially responsive records. Speculation that a record exists, without the support of a factual record, is not enough to support a finding that an agency failed to fully disclose responsive records. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

Upon receipt of your FOIA appeal, DCPS contacted you to identify additional search terms that might yield results. The agency subsequently informed you that it had identified responsive records, and it provided those records to you on May 11, 2020. In light of this, it appears that DCPS has taken adequate steps to search for records responsive to your request. If you are unsatisfied with DCPS' response, you may file a new appeal once you have had an opportunity to review the records that were provided to you.

Conclusion

Based on the foregoing, we dismiss this appeal as moot.

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: Eboni J. Govan
DCPS (via email)