

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-185**

September 22, 2020

VIA ELECTRONIC MAIL

Georgia Stewart

RE: FOIA Appeals 2020-185

Dear Ms. Stewart:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you contest the adequacy of the search the Department of Human Resources (“DCHR”) undertook in response to your request.

Background

You submitted a DC FOIA request seeking documentation that the Office of Human Rights (“OHR”) submitted in support of a September 20, 2016 memorandum OHR provided to DCHR—specifically, to DCHR’s then-general counsel, Margaret Radabaugh. DCHR responded to your request, stating that it conducted a search but was unable to locate any responsive records. You appealed on June 4, 2020, challenging the agency’s search. In responding to your appeal, the agency further detailed how it searched for responsive records: by searching its active case management system, FileNet, for any possible records and by inquiring with staff at OHR and the Office of the Attorney General.¹ DCHR also noted that it could not contact Ms. Radabaugh for assistance because she had since left her position with the District.

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. Code § 2-531. In aid of that 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).

¹ A copy of DCHR’s response to your appeal is attached.

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.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In this instance, we determine that DCHR's search was not fully adequate because it did not include a search of Ms. Radabaugh's email account. To be sure, the lack of responsive records in DCHR's active case management system suggests that such records may not exist. However, your request specifically sought documents that, if they existed, would necessarily have been sent to Ms. Radabaugh's email account. As a result, that email account is the most likely location where any responsive records would be found, and an adequate search would thus include a search of that account.

Conclusion

Based on the foregoing, we conclude that DCHR's search was inadequate and remand to the agency to conduct a search of Ms. Radabaugh's email account, targeted at locating any responsive documents. 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: Aphrodite Hadjiloucas
FOIA Officer
DCHR (via email)