

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-186**

February 7, 2022

VIA ELECTRONIC MAIL

Mr. Eugene Endress

RE: FOIA Appeal 2020-186

Dear Mr. Endress:

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 alleged failure of the Department of General Services (“DGS”) to provide documents responsive to your request.

Background

You submitted a DC FOIA request to DGS seeking the following relating to construction or repairs on the DC 2 Rocketship Charter School (the “Project”):

1. All documents and communications relating to project owner TA Washington 4250 MAS LLC’s (“Owner’s”) or Design-Builder MCN Build Inc.’s (“MCN’s”) acceptance of work performed on the Project by roofing subcontractor Kalkreuth Roofing and Sheet Metal (“Kalkreuth”) or other work performed on the roof.
2. All documents and communications relating to any insurance claims made in relation to the Project including, without limitation, insurance claims made in relation to the roof.
3. Any and all applications or requests for payment submitted to Owner by MCN.
4. Any and all evidence that Owner has made payment to MCN with respect to any such payment made by Owner in relation to the Project.
5. All documents and communications between relating to Kalkreuth or any work performed by Kalkreuth.

DGS initially responded to your request by asking for clarification on items #1 and #5 and for additional information such as solicitation or contract number to aid its search. You submitted the following narrower requests: “1. Acceptances of work issued by Owner or MCN in relation to the Project; 2. Communications between Owner or MCN and the Gallagher Bassett insurance company; 3. Documents containing the word ‘Kalkreuth.’” You also provided the prime contract for the project your request is in reference to and explained “the owner of the project appears to be a private company (TA Washington 4250 MAS LLC) not Washington DC or a political subunit of it.” DGS then sent a final response stating it had no responsive records. You appealed on the grounds that you believe DGS may possess responsive records.

In response to your appeal, DGS described the steps that it took to search for records and explained that no responsive records are in its possession.¹ In detailing its search, the agency noted that it assigned the request to the Contract and Procurement Division and the Capital Construction Division. The Contract and Procurement Division responded that it did not have records because Rocketship is a charter school and DGS works with DC Public Schools. The Capital Construction Division Project Manager responded that the division had no involvement in the construction of the Rocketship Charter School.

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” D.C. Code § 2-532(a).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. See *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. See *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of the Search

To the extent you challenge DGS’s assertion that it does not possess responsive records, we conclude that DGS properly conducted a search under the DC FOIA.

In determining whether an agency conducted an adequate search in response to a records request, the test is not whether documents might conceivably exist, but whether the agency’s search for responsive documents was adequate. See *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

¹ A copy of the agency’s response to your appeal is attached to this decision.

‘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, DGS identified the program offices likely to have responsive records. When initial searches yielded no results, DGS sought additional information from you to aid the search. The additional information indicated that DGS was involved in the project for which records were requested. In short, there is nothing to suggest that the agency has failed to search for records in its possession related to your request.

Conclusion

Based on the foregoing, we conclude that DGS conducted an adequate search in response to your request for records. Therefore, we deny this 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 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: Victoria Black Johnson, FOIA Specialist
DGS (via email)