

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2020-215 & 2020-217**

February 9, 2021

VIA ELECTRONIC MAIL

Ms. Lena Bell

RE: FOIA Appeal 2020-215 and 2020-217

Dear Ms. Bell:

This letter responds to the administrative appeals you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code § 2-537 (“DC FOIA”), on the grounds that the Department of General Services (“DGS”) improperly responded to your request related to a proposal from Allied Barton Security.

Background

Your FOIA request sought two sets of records: (a) the proposal submitted by Allied Barton Security in response to Solicitation DCAM-12-NC-0031, the subcontracting plan submitted with the proposal, and the approved subcontracting plan signed by a Department of Small and Local Business Development representative, and (b) e-mail communication and written correspondence between certain personnel at DGS and representatives of Allied Barton Security. DGS responded by stating that it “conducted a comprehensive search for records that would be responsive to your [first] request,” but said that it found no responsive documents. With respect to your second request, DGS stated that “DGS will notify you when the email request is available for release.”

You then appealed, noting tshat the “contracting office of DGS should have the contract documents and any and all correspondence involving the solicitation and award of the above referenced contract.” In response to your appeal, the agency informed our office that your appeal “can be considered mute [*sic*] and closed.” In response to a request for clarification from our office, the agency further explained: “[W]e applied response on June 25, 2020. Also, the Appeal does not say what asserts.”<sup>1</sup>

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

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<sup>1</sup> A copy of DGS’s responses to your appeals are attached to this decision.

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 right created under the 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 first issue implicated by your appeal is whether DGS conducted an adequate search for records. In order to establish the adequacy of a search, an 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.” *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 response to your request and your appeals, DGS provides absolutely no explanation or detail describing how it searched for responsive records. In particular, although the agency states that it was “unable to locate or identify any responsive records proposal, subcontracting plan and the approved subcontracting plan,” the agency does not list the steps that it took to search for those documents. As a result, we conclude that DGS has not met its burden to show that it conducted an adequate search for those records.

### *Timeliness*

The second issue implicated by your appeal is the timeliness of DGS’s production. DGS’s response to you appears to suggest that it has located responsive emails but that it has not yet reviewed those emails to determine which are eligible for disclosure. DGS stated that it “will notify you when the email request is available for release,” but did not provide any timeline.

Pursuant to D.C. Code § 2-532, the deadline for agencies to provide records in response to a DC FOIA request that was previously suspended during the “days of a COVID-19 closure” is now 45 business days from January 15, 2021. DGS is still within the statutorily allowed period to provide responsive documents. However, we encourage the agency to conduct its review expeditiously and provide you with any responsive, non-exempt documents in response to your request.

## Conclusion

Based on the foregoing, we remand this matter to DGS to provide you and this office with a detailed explanation of the search it conducted for the requested documents—specifically, the proposal submitted by Allied Barton Security in response to Solicitation DCAM-12-NC-0031, the subcontracting plan submitted with the proposal, and the approved subcontracting plan signed by a Department of Small and Local Business Development representative. In addition, although the time to respond to your request has not formally lapsed, we encourage DGS to provide you with an update on when you can expect to receive DGS's production with respect to the requested emails.

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 D.C. Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: Victoria Johnson, FOIA Officer  
DGS (via email)