

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2020-219**

February 11, 2021

VIA ELECTRONIC MAIL

Ms. Sophia Watts-Jenkins

RE: FOIA Appeal 2020-219

Dear Ms. Jenkins:

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 response of the Office of Human Rights (“OHR”) to your FOIA request.

On May 7, 2020, you submitted a FOIA request to OHR seeking “the rubric that was completed to terminate” you from your position with the District of Columbia Public Schools (“DCPS”). You also asked OHR to respond to questions about whether certain individuals were contacted in your case. On July 14, 2020, OHR contacted you and explained that, “[a]lthough the meaning of ‘rubric’ in [your] request is unclear, OHR is releasing all records in the investigative file that are subject to disclosure.” You responded by requesting that OHR provide you with a “form,” not contained in the investigative record, that you believe certain DCPS employees filled out pertaining to you. OHR explained, however, that it had no copy of such a form in its investigative record for your case.<sup>1</sup>

Under FOIA, an agency has no obligation to produce records that are not under its possession or control. *See United States Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989).<sup>2</sup> To the extent that the “rubric” or “form” that you seek exists, it is not in OHR’s possession or control. As OHR explained, it has searched its entire investigative record in your case and not located that document.

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 Env’tl. Prot. 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

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<sup>1</sup> A copy of OHR’s response to your appeal is attached.

<sup>2</sup> 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).

122, 129-130 (D.D.C. 2009). FOIA thus imposed no obligation on OHR to respond to your questions about its investigative techniques.

We therefore conclude that OHR properly responded to your FOIA request and we hereby 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 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: Charles Abbott, Interim FOIA Officer  
OHR (via email)