

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-224**

VIA E-MAIL

Mr. Bamidele Ajisogun

RE: FOIA Appeal 2020-224

Dear Mr. Ajisogun:

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 challenge the response of the District Department of Transportation (“DDOT”) to your request for public records under the DC FOIA.

Background

You submitted a DC FOIA request for the results of any requests for proposals and contracts related to the administration of certain employee benefit programs. Additionally, you requested that DDOT answer certain questions regarding city employees. On July 22, 2020, DDOT responded and indicated that it did not have any public records responsive to your request. You subsequently filed the present appeal.

DDOT filed a response to your appeal on September 23, 2020. The agency again indicates that it does not have records responsive to your request. Specifically, DDOT states that the subject matter of the records you have requested is beyond the agency’s jurisdiction.

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. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official 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. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

In your appeal, you indicate that you are aware that “there is a contract out there” and request that DDOT provide the contract to you in accordance with the DC FOIA. However, 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. United States (Dep’t of Justice)*, 578 F.2d 261 (9th Cir. 1978). Your appeal provides no reason to

question DDOT's assertion that it does not maintain records pertaining to the subject matter your identified.

Conclusion

Based on the foregoing, we conclude that DDOT provided a sufficient response to your appeal. For this reason, we 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 government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Karen R. Calmeise, FOIA Officer
DDOTs (via email)