

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-014**

June 3, 2021

VIA ELECTRONIC MAIL

Ms. Brenda Parker

RE: FOIA Appeal 2021-014

Dear Ms. Parker:

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”). In your appeal, you challenge the response you received from the Office of Unified Communications (“OUC”) regarding your request for public records under DC FOIA.

Background

You submitted a DC FOIA request to OUC seeking records of 311 calls you made on August 3, 2020 between 12:00 p.m. and 2:00 p.m. at the corner of 16th Street NW and Newton Road NW. You included the 311 operator and supervisor number in your request. In response, OUC performed a search for the 311 calls involving the information you provided and found no calls. OUC thus denied your request. This appeal followed.

In response to your appeal, OUC performed a second search based on the information you originally provided. In its response, OUC explains that (a) 311 calls are automatically purged after 90 days and you did not provide any new information that would assist in a second review, and (b) the second search yielded no results.¹

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. Official 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

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

federal stature 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).

Adequacy of Search

Because you appeal from a decision by OUC in which the agency determined it had no records responsive to your request, we construe your appeal as challenging the adequacy of the agency's search. 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.*

Here, OUC's FOIA Officer affirmed that she twice searched OUC's database of 311 phone call recordings based on the information you provided and that neither search yielded responsive records.

Conclusion

Based on the foregoing, we affirm OUC's denial of your request based on its determination that it conducted an appropriate search and that no responsive records could be located. 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: Jared Siegel
Assistant General Counsel
OUC (via email)