

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-048**

September 26, 2022

VIA ELECTRONIC MAIL ONLY

Mr. Kenneth William Bell

RE: FOIA Appeal 2021-048

Dear Mr. Bell:

This letter is in response to the administrative appeal that you have submitted to the Mayor pursuant to the District of Columbia Freedom of Information Act ("FOIA"), D.C. Code §§ 2-531, *et seq.* In your appeal, you have challenged the response of the Office of Contracting and Procurement ("OCP") to your November 13, 2020 FOIA request, identified as 2021-FOIA-01089, which sought the following:

With regard to the work, construction, and/or demolition which was accomplished and/or attempted on roads, sidewalks, and/or curbs in DC on D St NE between 19th St NE and Oklahoma Ave from 1 Jan 2019 to 1 Oct 2020:

1. Requesting any documents with information on who accomplished the work/construction/demolition/actions;
2. Requesting any documents with information on whether it was DDOT, or a contracted company/companies;
3. If contracted company/companies, requesting any documents with information on which one(s).
4. Requesting any documents with contact information for said companies;
5. If in existence, I request copies of the contracts, permits, and/or records of equipment used;
6. Request copies of any/all photos of said work/construction/demolition/actions which were taken mid-project;
7. Request copies of any/all photos of said work/construction/demolition/actions which were taken post-project; and
8. If accomplished by DDOT, I request the usage logs of equipment

used/associated with this project at the location and within the time period above- specified.

OCP closed your request on December 8, 2020 because it could not locate any responsive records. You were advised that neither,

“[the] OCP contract workspace nor DDOT’s systems are configured in a way to search based on the parameters provided. The data is not stored in a format searchable by location and date. If you are able to find the contract, DOC, contract officer or specialist name(s) please feel free to submit your request again...”

As the basis for your appeal, you have asserted that OCP has conducted an inadequate search and the actions of the FOIA Officers—in “simply not thinking outside the box...”—is illegal and unsatisfactory.

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, FOIA creates the right “to inspect...and...copy any public record of a public body...” D.C. Code § 2- 532(a).

As a preliminary issue of whether OCP conducted an adequate search is whether the request adequately describes the records sought.

Your request broadly uses the terms “any” and “all” to describe the “documents with information”, for which OCP is then tasked with identifying and disclosing. Such a request does not reasonably describe the records sought and is insufficient to permit the identification and location of records within an agency without an unreasonable amount of effort. *See* 1 DCMR § 402.4 (“A request shall reasonably describe the desired records. Where possible, specific information regarding names, places, events, subjects, dates, files, titles, file designation, or other identifying information shall be supplied”); *Dale v. IRS*, 238 F. Supp. 2d 99, 104 (D.D.C. 2002) (a request for “any and all” records does not describe the records sought with reasonably sufficient detail). “[T]he rationale for this rule is that FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters.” *Assassination Archives & Research Ctr. v. CIA*, 720 F.Supp. 217, 219 (D.D.C. 1989). “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 122, 129-130 (D.D.C. 2009).

An agency's obligations commence upon receipt of a valid request. *See Crooker v. CIA*, 577 F.Supp. 1225 (D.D.C.1984); *Lilienthal v. Parks*, 574 F.Supp. 14, 17 (E.D.Ark.1983). As such, OCP has provided an adequate response to the request and any determination as to whether or not OCP has conducted a reasonable search is not ripe at this time.

While OCP was unable to identify the records sought given the search parameters, it is noted that information regarding contract solicitations to and awards of the District government are publicly accessible online through the Contract and Procurement Transparency Portal (<https://contracts.ocp.dc.gov/solicitations/search>).

Conclusion

Based on the foregoing, this appeal is denied. 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: Jeremiah Regan. OCP FOIA Officer (via email only)