

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-062**

June 28, 2022

VIA ELECTRONIC MAIL

Mr. Billy Raoufou

RE: FOIA Appeal 2021-062

Dear Mr. Raoufou:

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”), on the grounds that the Homeland Security and Emergency Management Agency (“HSEMA”) improperly responded to your FOIA request.

Background

You submitted a FOIA request seeking “CCTV footage from the cameras at Connecticut Ave and Calvert St NW on [December 17, 2020] from 7pm to 730pm.” On January 11, 2021, HSEMA granted your request in full. You followed up and asked for a different view of the intersection. HSEMA replied and explained to you that it provided the only camera angle it had.

You filed your appeal with this Office on January 6, 2021, stating “I need the CCTV traffic footage from December 17th 2020 7pm to 730pm showing the camera angle that includes a visual of the intersection of Connecticut Ave NW and Calvert St NW itself.” We construe your appeal as challenging the adequacy of HSEMA’s search for responsive records. On February 1, 2021, HSEMA filed a response to your appeal.¹ In the response, HSEMA reiterated that it granted your request in full, and notified you “that the camera angle captured in the footage provided was the only angle available, and that we do not have the ability to retroactively change the angle.”

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).

¹ A copy of HSEMA’s response to your appeal is attached to this decision.

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).

Adequacy of 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).

Here, based on HSEMA's representations, we understand that HSEMA has reviewed the entirety of the footage that it has for the intersection in question and that the footage it provided to you is the only footage the agency has in its possession. Therefore, we believe the agency responded appropriately to your initial request and to your follow-up request.

Conclusion

Based on the foregoing, 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: Whitney Bowen Abrams, FOIA Officer
HSEMA (via email)