

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-088**

June 15, 2021

VIA ELECTRONIC MAIL

Ms. Rebeca Forte

RE: FOIA Appeal 2021-088

Dear Ms. Forte:

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 reiterate your request to the Office of Unified Communications (“OUC”) for 911, police, and emergency communications of a particular incident involving a motor vehicle.

Background

On January 22, 2021, you submitted a request to OUC for “911 Communications, police, and emergency communications for [a specific motor vehicle collision incident number.” You also provided the address of the incident. In response, OUC searched for 911 call and emergency communications based on the information you provided and found no responsive records. On February 12, 2021, you provide OUC with phone numbers that may have been used for a 911 communication. Subsequently, OUC searched again with the newly provided information and found no responsive records. OUC thus denied your request.

You then submitted this appeal, in which you did not argue that OUC had erred, but you provided additional information to aid with a search for responsive records. In particular, on appeal, you clarified that there was no police report number related to this incident. However, you did not provide any new phone numbers for OUC to search with. OUC conducted a second search using the phone numbers you previously provided on February 21st and still was unable to locate any responsive records. In its response to your appeal, OUC explains that it could locate no responsive 911 and emergency call recordings after searching its records system.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

¹ A copy of OUC’s response to your appeal and accompanying declaration are attached.

policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a).

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

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 911 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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Jared Siegel, Assistant General Counsel
OUC (via email)