

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2021-177**

April 11, 2022

**VIA ELECTRONIC MAIL**

Mr. Diego Montares Silva

RE: FOIA Appeal 2021-177

Dear Mr. Montares Silva:

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”), on grounds that the Department of For-Hire Vehicles (“DFHV”) failed to properly respond to your FOIA request for public records.

**Background**

You submitted a DC FOIA request to DFHV seeking “information about the costs of the system and service(s) that DFHV uses for receiving, processing and analyzing data from the taxi and limousine industry and the TNC (ridehailing) companies operating in Washington DC.” You specified that “[i]ndependent of whether this system and service was developed in-house by the DFHV or by a vendor, [you]’d like to know the initial costs (Capex) that the agency incurred in developing such a system, as well as the ongoing yearly cost (Opex) for it’s [sic] maintenance.”

The agency responded to your request by notifying you that “DFHV uses a contractor to receive, process, and analyze data from the for-hire vehicle industry. The costs incurred for developing and maintaining such system are outlined in contracts between the agency and vendor, Eastbanc” and contract information “must be requested from the District’s Office of Contracting and Procurement.” DFHV also noted that “the purpose of FOIA is to provide access to existing records and not answer questions or create records in order to respond to a request. You appealed asserting, “[f]rom the agency’s response, it was hinted that they had this information, however they did not want to disclose it.” In your appeal you also reiterated “[because] it’s a vendor who developed it and is providing ongoing support for it, I want to know the total costs of such platform. If the total amount cannot be provided, I want to know at least which are these contracts that contain the total costs.” In response to your appeal, DFHV explained that it referred you to the Office of Contracting and Procurement after determining that cost information would be in the contracts with the vendor Eastbanc, which are maintained by the Office of Contracting and Procurement.<sup>1</sup>

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<sup>1</sup> A copy of the agency’s response to your appeal is attached to this decision.

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

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. See *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. See *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

### *Adequacy of the Search*

To the extent you challenge DFHV’s assertion that it does not possess responsive records, we conclude that DFHV properly conducted a search and referred you to the agency most likely to have responsive records.

In determining whether an agency conducted an adequate search in response to a records request, the test is not whether documents might conceivably exist, but whether the agency’s search for responsive documents was adequate. See *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.* Generalized and conclusory allegations cannot

suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In this instance, DFHV determined that it uses a contractor to receive, process, and analyze data for the for-hire vehicle industry and information on system cost would be in the vendor contracts. DFHV identified OCP as the agency that maintains contracts and suggested that you file a request there seeking responsive documents.

### Conclusion

Based on the foregoing, we conclude that DFHV appropriately responded to your request for records. Therefore, we deny this 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 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: Rasheena Latham, Complaints Manager  
DFHV (via email)