

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2021-204**

October 18, 2022

**VIA ELECTRONIC MAIL**

Mr. Don Padou

RE: FOIA Appeal 2021-204

Dear Mr. Padou:

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 behalf of your client Joel Findlay. In your appeal you have challenged the response of the Office of the City Administrator (“OCA”) to your client’s DC FOIA request.

**Background**

On January 19, 2021, your client submitted a DC FOIA request, identified as 2021-FOIA-02517, to OCA seeking:

All communications between Katherine Gan and Jennifer Wollenberg, Jason Carvalho, Sarah Keller, or any other employee of Chatel Real Estate Management, as well as any and all files, documents, electronic media, or communications created by, for, or at the request of the 1426 Rhode Island Avenue Condominium.

This was the second request for the same information, the first being represented in 2021-FOIA- 07007. OCA closed the latter request on March 25, 2021 stating that it did not have any documents that were responsive to your client’s request.

In your June 18, 2021 appeal you challenged the adequacy of OCA’s search and requested the “City Administrator be ordered to conduct a legally adequate search for all responsive records.” You assert that OCA has at least one responsive record because, through another source, your client received a document in which the metadata indicates “the document was created by ‘Gan, Katherine (EOM)</rdf:li>’ on, or about, August 8, 2019... using a copy of Adobe PDF Producer owned by the District of Columbia.” You have also stated, “[t]he document was *probably* emailed to Sarah Keller, one of the people specifically named in the FOIA request.” (emphasis added). In response to your appeal, OCA described the steps that it took to search for records and reiterated that it did not have any records that were responsive to the request. In detailing its search, the agency noted that:

Specifically, after receiving the FOIA request, OCA input the following search

string into the FOIA search portal for all emails sent or received by Katherine Gan: “jennifer wollenberg” OR “jason carvalho” OR “sarah keller” OR “chattel real estate management” OR “1426 Rhode Island Avenue.” This search returned zero results. OCA also asked Ms. Gan to search her own email and documents for any records responsive to this request, which also returned no results....

In addition, after receiving the appeal, OCA again searched specifically for emails of Ms. Gan on or near the date indicated in the appeal filed by Mr. Padou and did not locate any responsive records. In addition, Ms. Gan also again searched her files for responsive documents and did not identify any such records.

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

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*

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 that an agency has made an adequate search:

[T]he 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, OCA conducted an adequate search. The agency identified Katherine Gan's government email account as the likely location of responsive records and searched it in two ways. First, OCA submitted an email search request for all emails sent or received by Katherine Gan with the terms "jennifer wollenberg" OR "jason carvalho" OR "sarah keller" OR "chattel real estate management" OR "1426 Rhode Island Avenue." Second, OCA asked Ms. Gan to search her emails and documents for any responsive records. After receiving your appeal, OCA and Ms. Gan again searched for responsive records specifically on or near the date indicated in the appeal. In short, there is nothing to suggest that the agency has failed to search for records in its possession related to your request.

#### Conclusion

Based on the foregoing, we conclude that OCA conducted an adequate search in response 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: Barry Kreiswirth, OCA FOIA Officer (via email only)