

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-256**

June 30, 2022

VIA ELECTRONIC MAIL

Mr. Eric D. Carstens

RE: FOIA Appeal 2021-256

Dear Mr. Carstens:

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 assert that the Office of Tax and Revenue (“OTR”) within the Office of the Chief Financial Officer (“OCFO”) improperly denied as overbroad and vague your request for public records.

Background

You submitted a DC FOIA request to OTR seeking copies of “individual income tax audit documents and files relating to [2 clients] for tax years 2011, 2015 and 2016.” You specified that your request did not include documentation submitted by the clients or their representative but did include “any internal correspondence, internal memos, reports, notes, transcripts, or work papers that were generated by OTR” and provided 10 names of OTR employees known to be involved in the audits. To the extent not already covered, you also sought “all OTR employee internal and external correspondence relating to [client] without limitation as to the tax year.”

OTR responded to your request by asking for a narrowed scope and then denied your request as overbroad. You appealed, asking that OTR “conduct a reasonable and adequate search of their email server and/or electronic document management system and disclose the electronic records that [you] have requested in a reasonable timeframe. In response to your appeal, OTR explained its position that your request is too vague and unduly burdensome because it does not contain “guidance as to the context in which OTR would be interacting with the named individuals” and although the request lists 10 employees believed to have responsive records the request is not limited to records held by those employees.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. Code § 2-531. In aid of that

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

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).

The issue in this appeal is whether your request was sufficiently detailed to allow an agency employee familiar with the subject area of the request to locate the records within a reasonable amount of time. This Office rejects the premise that your request is too vague and burdensome to process. Your request asks for individual income tax audits files for 2 individuals for 3 tax years and if not duplicative, all OTR records relating to one of the individuals. That request describes records that are identifiable and retrievable.

It was OCFO’s responsibility to make a determination as to where the requested documents were likely to be located - a responsibility that can be met by identifying agency employees in the relevant programs and making inquiries about the nature of document creation and retention in those programs. See 1 DCMR § 402.5; see also *Truitt v. Dep’t of State*, 897 F.2d 540, 545 n. 36 (D.C. Cir. 1990) (quoting H.R. Rep. No. 93-876, 93d Cong., 2d Sess. at 6 (1974), reprinted in 1974 U.S.C.C.A.N. 6267, 6271)) (finding a request to not be vague when “a professional employee of the agency who [is] familiar with the subject area of the request... [could] locate the record with a reasonable amount of effort.”).

Conclusion

Based on the foregoing, we remand this matter to OTR to conduct a search for responsive records. If OTR determines that this production will incur fees, then you may either agree to pay the fees or discuss with OTR narrowing the scope of your request. This constitutes the final decision of this Office; however, you are free to challenge OTR’s subsequent response by separate appeal.

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: William Bowie, Senior Counsel
Office of Tax and Revenue (via email)