

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-017**

October 19, 2022

**VIA ELECTRONIC MAIL ONLY**

Mr. Michael Ayele

RE: FOIA Appeal 2022-017

Dear Mr. Ayele:

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 have challenged the response of the D.C. Board of Ethics and Government Accountability ("BEGA") to your DC FOIA request.

On September 22, 2021, you submitted a DC FOIA request to BEGA, identified as 2021-FOIA- 08241, which sought the following:

[A]ll records within your possession detailing (1) your communications in the form of e-mails and postal correspondence about the circumstances surrounding the 2019 murder of Alexandria Kostial; (2) your communications in the form of e-mails and postal correspondence about Alexandria Kostial being a woman from the State of Missouri who was attending the University of Mississippi as an undergraduate student; (3) your communications in the form of e-mails and postal correspondence about Brandon Theesfeld being a man from the State of Texas who was attending the University of Mississippi as an undergraduate student; (4) your communications in the form of e-mails and postal correspondence about the unhealthy relationship between Alexandria Kostial and Brandon Theesfeld; (5) your communications in the form of e-mails and postal correspondence about Eastern Washington University (located 526 5th St, Cheney, Washington) response to my records request submitted pursuant to the Jeanne Ann Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act; (6) your communications in the form of e-mails and postal correspondence about the Title IX training provided by Eastern Washington University pertaining to what constitutes "healthy relationships;" (7) your communications in the form of e-mails and postal correspondence about Alexandria Kostial informing Brandon Theesfeld that she may have been pregnant with his child on April 12th 2019; (8) your communications in the form of e-mails and postal correspondence about Alexandria Kostial July 2019 request for Brandon Theesfeld to meet her in order to discuss her possible pregnancy; (9) your communications in the form of e-mails and postal correspondence about Brandon Theesfeld July 18th 2019 request (for Alexandria Kostial) to have her pregnancy terminated; (10) your communications in the form of e-mails and postal

correspondence about Brandon Theesfeld July 19th 2019 request for Alexandria Kostial to meet him in person; (11) your communications in the form of e-mails and postal correspondence about Brandon Theesfeld meeting with Alexandria Kostial on the evening of July 19th 2019; (12) your communications in the form of e-mails and postal correspondence about the conditions of Alexandria Kostial body when it was found on July 19th 2019; (13) your communications in the form of e-mails and postal correspondence about Brandon Theesfeld admission to shooting Alexandria Kostial (with a Glock model 22.40 caliber pistol) on 8 separate occasions.”

On October 12, 2021, BEGA closed your request because it did not have any responsive records. In your November 4, 2021 appeal, you reiterated your request for certain records and put forth additional questions for which you seek an answer.

DC FOIA only requires that, under the circumstances, a search is reasonably calculated to produce the relevant documents. 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. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978). D.C. FOIA is agency specific. *See* 1 DCMR § 402 (“A request for a record of an agency may be made orally or in writing and shall be directed to the particular agency.”). An agency is required to disclose materials only if they were “retained by a public body.” D.C. Code § 2-502(18).

Further, under DC FOIA, an agency “has no duty either to answer questions unrelated to document requests or to create documents.” *Zemansky v. United States Envtl. Prot. Agency*, 767 F.2d 569, 574 (9th Cir. 1985). The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

Based on the foregoing, we conclude that BEGA properly responded to your request and we hereby 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 in accordance with D.C. Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: Sheree DeBerry, BEGA FOIA Officer (by email only)